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**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1956**

**No. 622**

**53**

**NATIONAL LABOR RELATIONS BOARD, PETITIONER**

**vs.**

**WOOSTER DIVISION OF BORG-WARNER  
CORPORATION**

**No. 758**

**78**

**WOOSTER-DIVISION OF BORG-WARNER  
CORPORATION, PETITIONER**

**vs.**

**NATIONAL LABOR RELATIONS BOARD**

**ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SIXTH CIRCUIT**

---

**No. 622 PETITION FOR CERTIORARI FILED DECEMBER 11, 1956**

**NO. 758 PETITION FOR CERTIORARI FILED FEBRUARY 8, 1957**

**CERTIORARI GRANTED MARCH 25, 1957**



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## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

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### In the Matter of WOOSTER DIVISION OF BORG-WARNER CORPORATION

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Case No. 8-RC-1842

- 11. 3.52 Petition for certification of representatives filed by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO (hereinafter called the CIO).
- 11.17.52 Notice of representation hearing issued by the Regional Director.
- 11.26.52 Agreement for consent election approved by the Regional Director.
- 12.11.52 Notice of election to be held.
- 12.11.52 Certification on conduct of election issued by the Regional Director.
- 12.11.52 Tally of Ballots issued by the Regional Director.
- 12.18.52 Certification of representatives issued by the Regional Director.

Case No. 8-CA 830

- 4. 7.53 Charge filed by the CIO.
- 6. 1.53 Amended charged dated.
- 3.15.54 Complaint and notice of hearing issued by the Regional Director.
- 4.12.54 Order rescheduling hearing issued by the Regional Director.
- 4.13.54 Respondent's answer to the complaint sworn to.



*Chronological List of Relevant Docket Entries*

- 5.11.54 Hearing opened.
- 5.18.54 Hearing closed.
- 8. 4.54 Joint stipulation to correct the transcript of testimony received (Granted, Trial Examiner's Intermediate Report page 2, footnote 3).
- 9.15.54 Trial Examiner Buchanan's Intermediate Report and Recommended Order issued.
- 9.15.54 Order transferring case to the National Labor Relations Board issued.
- 11. 4.54 Respondent's request for permission to argue orally before the Board received.
- 11. 5.54 Respondent's statement of exceptions to the Intermediate Report received.
- 5.20.55 Notice of hearing for the purpose of oral argument issued by the Board.
- 8.26.55 Board's decision and order issued.

IN THE  
**UNITED STATES COURT OF APPEALS**  
FOR THE SIXTH CIRCUIT

---

National Labor Relations Board, - - - - - Petitioner,

v.

Wooster Division of Borg-Warner  
Corporation, - - - - - Respondent..

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**CERTIFICATE OF THE NATIONAL LABOR  
RELATIONS BOARD**

The National Labor Relations Board; by its Executive Secretary, duly authorized by Section 102.84, Rules and Regulations of the National Labor Relations Board—Series 6, as amended, hereby certifies that the documents listed below constitute a full and accurate transcript of the entire record of proceedings had before said Board, entitled, “In the Matter of Wooster Division of Borg-Warner Corporation, Employer and International Union, United Automobile Workers of America, AFL, Petitioner and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO; Intervenor,” and “Wooster Division of Borg-Warner Corporation and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO,” the same being known as Cases Nos. 8-RC-1842 and 8-CA-830, respectively, before said Board, such transcript includes the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and includes also the findings and order of the Board.

*Certificate of National Labor Relations Board*

## VOLUME I

CERTIFIED  
RECORD

Stenographic transcript of testimony taken  
before Trial Examiner Lloyd Buchanan on  
May 11, 12, 13, 14, 17 and 18, 1954..... 1-725

## VOLUME II—Pleadings:

## Case No. 8-RC-1842

- \*1. Copy of petition for certification of representatives filed by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO on November 3, 1952 . . . . . 726
2. Copy of notice of representation hearing issued by the Regional Director on November 17, 1952 . . . . . 727
3. Copy of agreement for consent election approved by the Regional Director on November 26, 1952 (Marked General Counsel's Exhibit 3-A) . . . . . 728-729
4. Copy of Regional Director's Notice of election to be held December 11, 1952..... 730-731
5. Copy of Regional Director's certification on conduct of election issued December 11, 1952 . . . . . 732
6. Copy of tally of ballots issued by the Regional Director on December 11, 1952 (Marked General Counsel's Exhibit No. 3-B) . . . . . 733
7. Copy of certification of representatives issued by the Regional Director on December 18, 1952 (Marked General Counsel's Exhibit 3-C) . . . . . 734

\*Items 1 through 10 have been consecutively renumbered following the last page of the typewritten transcript, since the Board's brief will refer to these pages rather than to the pages of the Board's Appendix.



*Certificate of National Labor Relations Board*CERTIFIED  
RECORD

Case No. 8-CA-830

8. Copy of Trial Examiner Buchanan's Intermediate Report and Recommended Order dated September 15, 1954..... 735-822
9. Respondent's Statement of exceptions to the Intermediate Report, received November 5, 1954 . . . . . 823-849
10. Copy of Decision and Order issued by the National Labor Relations Board on August 26, 1955 . . . . . 850-875
11. Joint stipulation to correct the transcript of testimony received August 4, 1954. (Granted, see Trial Examiner's Intermediate Report, page 2, footnote 3).
12. Order transferring case to the National Labor Relations Board, dated September 15, 1954.
13. Affidavit of service, dated September 15, 1954, of Intermediate Report and Order transferring case to the Board, together with United States Post Office return receipts thereof.
14. Respondent's request for permission to argue orally before the National Labor Relations Board received November 4, 1954.
15. Copy of notice of hearing for the purpose of oral argument issued by the Board on May 20, 1955, together with affidavit of service and United States Post Office return receipts thereof.
16. Affidavit of service, dated August 26, 1955, of Decision and Order, together with United States Post Office return receipts thereof.

*Certificate of National Labor Relations Board*

## VOLUME III

CERTIFIED  
RECORD

†Exhibits introduced in evidence.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this first day of November, 1955.

(s) Frank M. Kleiler,  
Executive Secretary,  
National Labor Relations Board.

(Seal)

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†Except General Counsel's exhibits identified in the transcript of testimony as General Counsel's Exhibit Nos. 61 and 62 of which unofficial copies, furnished by Charging Party, have been included to make the record herein complete.

**GENERAL COUNSEL'S EXHIBIT No. 1-A**

United States of America

**NATIONAL LABOR RELATIONS BOARD****CHARGE AGAINST EMPLOYER**

Important—Read Carefully	Do Not Write In This Space
Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.	Case No. 8-CA-830
Instructions: File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.	Date Filed April 7, 1953 Compliance Status Checked By: N. M.

**1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT**

Name of Employer Wooster Division of Borg Warner Corporation	Number of Workers Employed 250
Address of Establishment (Street and number, city, zone, and State) Wooster, Ohio	Type of Establishment (Factory, mine, wholesaler, etc.) Identify principal product or service Manufacture of automobile and aircraft parts

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a), subsections (1) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

**2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places; etc.)**

Since on or about March 20, 1953, and at all times thereafter, it, by its officers, agents and representatives, has refused to bargain collectively with International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, a labor organization chosen by a majority of its employees in an appropriate unit, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.



*General Counsel's Exhibit No. 1-A*

By the acts set forth in the paragraph above and by other acts and conduct, it, by its officers, agents and representatives, has interfered with, restrained and coerced and is interfering with, retraining and coercing its employees in the exercise of their rights guaranteed in Section 7 of the said Act.

**3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge**

International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO

**4. Address (Street and number, city, zone, and State)**

2082 East Fourth St., 403 Buckeye Building,  
Cleveland 15, Ohio

**Telephone No.**

TO. 1-0580

**5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)**

International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO

**6. Address of National or International, if any (Street and number, city, zone, and State)**

8000 East Jefferson Street, Detroit, Michigan

**Telephone No.**

LO. 8-4000

**7. DECLARATION**

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By (s) Herbert J. Pappin

(Signature of representative or person filing charge)

International Representative

(Title, if any)

April 7, 1953

(Date)

**Willfully False Statements On This Charge Can Be Punished By Fine And Imprisonment  
(U. S. Code, Title 18, Section 80)**

**GENERAL COUNSEL'S EXHIBIT No. 1-D**  
**United States of America**  
**NATIONAL LABOR RELATIONS BOARD**  
**AMENDED CHARGE AGAINST EMPLOYER**

Important—Read Carefully	Do Not Write In This Space
<p>Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.</p>	<p>Case No.  <div style="text-align: center; font-size: 1.2em;">8-CA-830</div> </p>
<p>Instructions. File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.</p>	<p>Date Filed</p>
	<p>Compliance Status Checked By:</p>

**1: EMPLOYER AGAINST WHOM CHARGE IS BROUGHT**

<p>Name of Employer  <div style="text-align: center; font-size: 1.1em;">Wooster Division of Borg-Warner Corporation</div> </p>	<p>Number of Workers Employed  <div style="text-align: center; font-size: 1.1em;">250</div> </p>
<p>Address of Establishment (Street and number, city, zone, and State)  <div style="text-align: center; font-size: 1.1em;">Wooster, Ohio.</div> </p>	<p>Nature of Employer's Business (State whether manufacturing, mining, construction, transportation, communication, other public utility, wholesale or retail trade, service, etc., and give principal product or type of service rendered.)  <div style="text-align: center; font-size: 1.1em;">Manufacture of automobile and aircraft parts</div> </p>

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsection (1) and (3) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

**2. Basis of the Charge** (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about March 20, 1953, and at all times thereafter, it, by its officers, agents and representatives, has refused to bargain collectively with International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, a labor organization chosen by a majority of its employees in an appropriate unit, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

Since on or about May 2, 1953, the employees listed in the attached sheet, marked Appendix A, were discriminated against by the Employer because of their concerted activity and activity on

*General Counsel's Exhibit No. 1-D*

behalf of International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, in that they were refused reinstatement by the Employer to their former positions after their unconditional offer to return to work following a strike caused by the unfair labor practices of the Employer.

Since on or about May 2, 1953, the employees listed in the attached sheet, marked Appendix B, were discriminated against by the Employer because of their concerted activity and activity on behalf of International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, in that they were not reinstated for varying periods of time after their unconditional offer to return to work following a strike caused by the unfair labor practices of the Employer.

Since on or about May 2, 1953, employees Albert Poulson and Robert Ostrum were discriminated against by the Employer because of their concerted activity and activity on behalf of International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, in that they were demoted by the Employer after their return to work following a strike caused by the unfair labor practices of the Employer.

By the acts set forth in the paragraph above and by other acts and conduct, it, by its officers, agents and representatives, has interfered with, restrained and coerced and is interfering with, restraining and coercing its employees in the exercise of their rights guaranteed in Section 7 of the said Act.

**APPENDIX A**

Howard Myers	John Juchum	Charles Myers
Henry Boyes	Robert Ross	William Dilgard
Wallace Totten	Emmett Treece	Dorance Frease
Clifford Stanford	John Ellsperman	Henry Lance
Clinton Crisco	Richard Atterholt	Paul Gable
Donald Burnett	Russell Pickering	Ola Bittner
Louis Goldner	George Brettin	Helen Cadmus
Paul Haidet	Richard McHenry	Clara Westfall
Peter Baird	Michael Juchum	Margaret Gisinger
Levi Wilder	David Kauffman	Rosanna Brady
Ramon Zappone	John Tinkey	Bernadine Daly
Ira Leaman	Dean Foster	Helen Jeffries
Tom Endsley	Wayne Patterson	Dorothy Snyder
Merrill Moutoux	Wesley Snoddy	Mildred Balm
Floyd Smith	John Fath	

*General Counsel's Exhibit No. 1-D***APPENDIX B**

Homer Butdorff	Paul Eichelberger	Jerald Lance
Leland Read	Gene Krichbaum	Kenneth O'Brien
Earl Force	Charles Rock	Donald McCormick
Thomas Straits	Bernard Ranville	Frank Lengacher
Donald Huffman	Royal Alexander	Wayne Hunter
Albert Poulson	Carl Stringfellow	Dale Knox
Robert Ostrom	Harold McKee	Robert Donaldson
Ivan Bogly	James Franco	Wyman Fry
Robert Kindig	Jack Snowbarger	Roswell Amos
Richard Crossen	John Hiller	Hulon Amos
Clair Weekley	Eugene Finley	Lloyd Burnett
Paul Lifer	Ernest Wilson	Samuel Bowen
Ralph Lifer	Ralph Riblett	Kenneth Lown
Woodrow Easterday	Floyd Frye	Paul Evans
Alex Erdos	George Green	
Herbert King	Harry Fittler	

**3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge**

International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO

**4. Address (Street and number, city, zone, and State)**

2082 East Fourth St., 403 Buckeye Building,  
Cleveland 15, Ohio

**Telephone No.**

To. 1-0580

**5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)**

International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO

**6. Address of National or International, if any (Street and number, city, zone, and State)**

8000 East Jefferson Street, Detroit, Michigan

**Telephone No.**

LO. 8-4000

**7. DECLARATION**

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By (s) Herbert J. Pappin  
Attorney for UAW-CIO

(Signature of representative or person filing charge)

International Representative

(Title, if any)

June 1, 1953

(Date)

Willfully False Statements On This Charge Can Be Punished By Fine And Imprisonment  
(U. S. Code, Title 18, Section 80)



United States of America

Before the

**NATIONAL LABOR RELATIONS BOARD**

Eighth Region

---

In the Matter of

Wooster Division of  
Borg-Warner Corporation

and

International Union, United Automobile  
Aircraft & Agricultural Implement  
Workers of America, CIO

Case No.  
8-CA-830

---

**GENERAL COUNSEL'S EXHIBIT No. 1-F**

**COMPLAINT**

Case No. 8-CA-830

It having been charged by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, that the Wooster Division of Borg-Warner Corporation has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the Labor-Management Act, 1947, hereinafter called the Act, the General Counsel of the National Labor Relations Board, on behalf of the said Board, by the Regional Director for the Eighth Region, hereby issues his Complaint and alleges:

1. Wooster Division of Borg-Warner Corporation, hereinafter called Respondent, is an unincorporated division of Borg-Warner Corporation, an Illinois corporation. Borg-Warner Corporation operates plants in various states of the United States.

*General Counsel's Exhibit No. 1-F—Complaint*

2. At all times material to this proceeding, Respondent has been engaged at its plant at Wooster, Ohio, in the manufacture, sale and distribution of fuel and hydraulic pumps. Respondent, at all times material herein, annually shipped finished products valued in excess of \$100,000 to points outside the State of Ohio from its Wooster, Ohio, plant.

3. Respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

4. International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, hereinafter called the Union, and its Local Union No. 1239, hereinafter called the Local, are labor organizations within the meaning of Section 2 (5) of the Act.

5. The following employees of the Wooster Division of Borg-Warner Corporation, at its Wooster plant, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

“All production and maintenance employees including plant clerical employees, stock and tool handlers, excluding all production control department employees, industrial and product engineering department employees, statistical quality control department employees, timekeepers, checkers, laboratory employees, all office employees and office clerical employees, nurses, professional employees, guards and watchmen as defined in the Act.”

6. On or about December 11, 1952, a majority of the employees in the unit described above in Paragraph 5, by a secret election conducted under the supervision of the Regional Director for the Eighth Region of the Board, designated or selected the Union as their representative

*General Counsel's Exhibit No. 1-F—Complaint*

for the purposes of collective bargaining, and on December 18, 1952, was so certified.

7. At all times since December 18, 1952, the Union has been the representative for the purposes of collective bargaining of a majority of the employees in said unit and, by virtue of Section 9 (a) of the Act, has been and is now the exclusive bargaining representative of all the employees in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment.

8. On or about January 13, 1953, the Union requested Respondent to bargain collectively in respect to rates of pay, wages, hours of employment or other conditions of employment with the Union as the exclusive bargaining representative of all the employees of Respondent in the unit described above in Paragraph 5.

9. On or about February 9, 1953, and at all times thereafter, Respondent did refuse and continues to refuse to bargain collectively with the Union as the exclusive representative of all the employees in the unit described above in Paragraph 5 by the following acts:

- (a) Insisting that it would enter into a written agreement covering rates of pay, wages and conditions of employment only with the Local.
- (b) Insisting that it would not enter into any written agreement covering wages, hours or conditions of employment with the Union;
- (c) Insisting that any agreement reached contained a clause providing that before the Union or the Local could strike or the employees engage in a strike, there should be a secret written ballot in which all employees in the unit, whether or not members of the Union or Local, shall be per-

*General Counsel's Exhibit No. 1-F—Complaint*

- mitted to vote on whether to accept or reject the Company's last offer or any succeeding offer;
- (d) Insisting that the strike ballot referred to above in (c) be conducted on company premises;
  - (e) Insisting that any agreement reached provide that before any such agreement could be amended, modified or terminated, all employees in the bargaining unit, whether or not members of the Union or Local, be permitted to vote in a secret written ballot on company premises on said question or questions;
  - (f) By meeting with and bargaining with the Local alone on or about April 27, 1953, and thereafter, concerning wages, hours and conditions of employment; and
  - (g) By entering into a written contract on or about May 4, 1953, with the Local alone concerning wages, hours and conditions of employment.

10. On or about March 20, 1953, the employees of Respondent, at its Wooster plant, ceased work concertedly and went on strike because of the unfair labor practices of Respondent set forth in Paragraph 9 (a) through (e).

11. On or about May 4, 1953, the employees named in Schedule A, annexed hereto and made a part hereof, applied for reinstatement to their former or substantially equivalent positions or employment and/or had otherwise indicated to the Respondent that they were available for work.

12. On or about May 4, 1953, and thereafter, Respondent refused and continues to refuse to reinstate the employees named in Schedule A to their former or substantially equivalent position or employment.



*General Counsel's Exhibit No. 1-F—Complaint*

13. Respondent did refuse and continues to refuse to reinstate the employees named in Schedule A for the reason that they had, or Respondent believed they had, assisted and had become members of the Union and/or had participated in the strike described above in Paragraph 10 or had refused to work during said strike and had engaged in other concerted activities for the purposes of collective bargaining and other mutual aid and protection.

14. Respondent, from on or about February 9, 1953, and more particularly as hereinafter set forth, by its officers, agents and supervisors:

- (a) On or about April 1, 1953, and thereafter, solicited and urged individual employees to abandon the strike and return to work;
- (b) On or about April 15, 1953, and thereafter, sent letters to employees threatening them with loss of employment unless they abandoned the strike and returned to work;
- (c) From on or about February 20, 1953, and thereafter, through its officers, agents and supervisors, more particularly, Harry Blythe, Gerald Barker and Derwood McCune, urged employees and officers of the Local to get rid of the Union and promised them benefits if they would do so; and
- (d) From on or about March 1, 1953, and thereafter, urged employees to abandon the Union and act through the Local alone.

15. By the acts described above in Paragraph 9 (a) through (g) and the acts described in Paragraph 14 (a) through (d), and by each of said acts, Respondent did engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8 (a) (5) of the Act.

16. By the acts described above in Paragraph 9 (a) through (g), Paragraph 14 (a) through (d), and Para-

*General Counsel's Exhibit No. 1-E—Complaint*

graphs 11, 12 and 13, and by each of said acts, Respondent did interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and is thereby engaging in an unfair labor practice within the meaning of Section 8 (a) (1) of the Act.

17. By the acts described above in Paragraphs 10, 11, 12 and 13, and for the reasons set forth in Paragraph 13, Respondent did discriminate and is discriminating in regard to the hire or tenure or terms or conditions of employment of the employees named in Schedule A, attached hereto, thereby discouraging membership in the Union, and Respondent did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8 (a) (3) of the Act.

18. The activities of Respondent described above in Paragraphs 9 (a) through (g) and Paragraphs 10, 11, 12, 13 and 14 (a) through (d), occurring in connection with the operations of Respondent described above in Paragraphs 1, 2 and 3, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

19. The acts of Respondent, described above, constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (1), (3) and (5) and Section 2 (6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Complaint to be signed and issued by the Regional Director for the Eighth Region on this 15th day of March, 1954.

(s) John A. Hull, Jr.,

Regional Director,  
National Labor Relations Board,  
Eighth Region.

*General Counsel's Exhibit No. 1-F—Complaint*

## SCHEDULE A

Mildred Bahn  
Ola Bittner  
Henry Boyes  
Rosanna Brady  
George Brettin  
Donald Burnett  
Helen Cadmus  
Clinton Crisco  
William Dilgard  
Bernadine Daly  
Harry Fittler  
Dorrance Frease  
Margaret Gisinger  
Paul Haidet  
Helen Jeffries  
Warne E. Jordan  
Michael Jochum  
David Kaufman

Henry Lance  
Richard McHenry  
Harold A. McKee  
Merrill Moutoux  
Charles Myers  
George D. Orr  
Robert Ostrum  
Wayne Patterson  
Albert Poulson  
Robert Ross  
Wesley Snoddy  
Dorothy Snyder  
Clifford Stanford  
John Tinkey  
Wallace Totten  
Emmett Treece  
Peter Baird  
Clara Westfall

**GENERAL COUNSEL'S EXHIBIT No. 1-K****ANSWER**

Case No. 8-CA-830

Now comes the Respondent and for its answer to the complaint herein denies each and every allegation of the complaint not specifically admitted to be true, and for its further answer to the complaint, says:

1. Respondent admits that Wooster Division is an unincorporated division of Borg-Warner Corporation; that Borg-Warner Corporation is an Illinois corporation; and that Borg-Warner Corporation owns various divisions which divisions operate plants in various states.

2. Respondent denies each and every allegation contained in paragraph 2 of the complaint except that it admits that it has been and is engaged in the manufacture, sale and distribution of fuel and hydraulic pumps, and that in 1953 it shipped products having a value in excess of \$100,000 to points outside the State of Ohio.

3. Respondent admits the allegations of paragraph 3 of the complaint.

4. Respondent denies each and every allegation contained in paragraph 4 of the complaint except that it admits and alleges that International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO hereinafter called, UAW-CIO, is an unincorporated labor union which exists, in whole or in part, for the purpose of dealing, on behalf of its members and other employees, with employers in the United States and Canada concerning labor disputes, wages, rates of pay, hours of employment and conditions of work; that UAW-CIO organizes its members into unincorporated local unions, each identified by number, through each of which local unions UAW-CIO carries on its activities in a specified



*General Counsel's Exhibit No. 1-K—Answer*

plant or area; and that the local union of UAW-CIO through which it carries on its union activities at the Wooster Division of Borg-Warner Corporation is identified by UAW-CIO as its Local 1239.

5. Respondent admits the allegations of paragraph 5 of the complaint.

6. Respondent denies each and every allegation contained in paragraph 6 of the complaint except that it admits and alleges that on December 11, 1952 a secret election was conducted under the supervision of the Regional Director for the Eighth Region of the National Labor Relations Board; that a majority of Respondent's employees who voted in said election voted in favor of UAW-CIO as their representative for the purposes of collective bargaining with the Wooster Division of Borg-Warner Corporation; and that on December 18, 1952 the UAW-CIO was so certified by the National Labor Relations Board.

7. Respondent denies each and every allegation contained in paragraph 7 of the complaint, except that it admits that between December 18, 1952 and March 20, 1954, said UAW-CIO was the legal representative for the purposes of collective bargaining of all of Respondent's employees in said unit. Respondent alleges that said UAW-CIO is not now, and for several months has not been, in fact the collective bargaining representative of a majority of Respondent's employees in said unit.

8. Respondent denies each and every allegation contained in paragraph 8 of the complaint except that it admits that in the month of January, 1953, the UAW-CIO requested Respondent to bargain collectively with it as the exclusive bargaining representatives of all of the employees of Respondent in the unit described in the complaint with respect to the matters alleged in said paragraph 8. Respondent alleges that pursuant to said request it

*General Counsel's Exhibit No. 1-K—Answer*

promptly did enter into collective bargaining negotiations with the UAW-CIO in respect to said matters.

9. Respondent denies each and every allegation of paragraphs 9, 9(a), 9(b), 9(c), 9(d), 9(e), 9(f) and 9(g) of the complaint, and alleges that on the contrary the UAW-CIO, from and after February 9, 1953, failed and refused to bargain collectively and in good faith with Respondent.

10. Respondent denies each and every allegation contained in paragraph 10 of the complaint, and further specifically denies that the failure of any employee to report for work for Respondent was because of an unfair labor practice of Respondent. Respondent admits that on or about March 20, 1953 some of its employees failed to report for work and went on strike.

11. Respondent denies each and every allegation contained in paragraphs 11, 12, and 13 of the complaint, and alleges that on the contrary subsequent to March 19, 1953 each person named in Schedule A attached to the complaint either returned to work for Respondent, or quit his employment by Respondent, or failed or refused to report for work for Respondent and was lawfully replaced by an employee of Respondent, or refused a bona fide offer by Respondent of substantially equivalent employment with Respondent, or caused or engaged in illegal mass picketing of Respondent's plant and illegal blocking of ingress to and egress from Respondent's plant.

12. Respondent denies each and every allegation contained in paragraphs 14, 14(a), 14(b), 14(c) and 14(d) of the complaint, except that it admits and alleges that in April, 1953, those employees who had failed to report for work were requested to return to work for Respondent and were later advised that Respondent could not guaran-

*General Counsel's Exhibit No. 1-K—Answer*

tee that after April 20, 1953 Respondent would have work for such employees.

13. Respondent denies each and every allegation contained in paragraphs 15, 16, 17, 18 and 19 of the complaint.

14. Respondent alleges that, in the month of January, 1953, when the UAW-CIO requested Respondent to bargain collectively with it as the exclusive bargaining representative of all of the employees of Respondent in the unit described in the complaint, Respondent promptly entered into collective bargaining negotiations with the UAW-CIO and continued to bargain with the UAW-CIO with respect to wages, rate of pay, hours of employment and other conditions of employment of said employees until May 5, 1953, when agreement having been reached between Respondent and UAW-CIO with respect to the subject matters of said bargaining, said agreement was reduced to writing, signed by Respondent and the UAW-CIO and made effective as of March 20, 1953. By its agreement to the terms of said written contract and by its execution thereof, UAW-CIO, on its own behalf and on behalf of all employees of the Respondent represented by it as their collective bargaining agent, waived and abandoned any and all claims which it or the employees represented by it had or claimed to have that the Respondent was guilty of any refusal or failure to bargain or of any other unfair labor practice asserted in the complaint and any and all such claims thereby became extinguished.

15. Respondent further alleges that in connection with the collective bargaining negotiations leading up to the agreement which resulted in the execution of said written contract, dated May 5, 1953, between UAW-CIO and the Respondent, the UAW-CIO agreed to withdraw the charges that the Respondent had been guilty of unfair labor practices upon which the complaint herein is based, and there-

*General Counsel's Exhibit No. 1-K—Answer*

after and prior to the filing of the complaint herein did withdraw such charges; and that therefore the Board is without jurisdiction to entertain the complaint.

16. Respondent further alleges that in the course of the collective bargaining negotiations leading up to the execution by the UAW-CIO and the Respondent of said written agreement of May 5, 1953, the UAW-CIO, as the collective bargaining agent of Respondent's employees, and the Respondent entered into a written agreement specifically provided with respect to the persons named in Schedule A of the complaint terms and conditions to govern the return or failure to return to work of each of said persons. Respondent further alleges that it has fully performed all of the provisions of said agreement on its part agreed to be performed and that by the execution of said agreement and by its said performance by the Respondent any and all right or claim of any person named in said Schedule A to employment by the Respondent has been waived, released and discharged.

17. Respondent further alleges that throughout the period from May 5, 1953 until March 20, 1954, the UAW-CIO recognized the validity and continuing effectiveness of said contract so entered into on May 5, 1953, and, purporting to act as the exclusive collective bargaining agent of all of the employees of Respondent, included in said unit, administered the same and continuously engaged thereunder in collective bargaining with respect to grievances, rates of pay, wages, hours of employment and other conditions of employment, including modifications in said bargaining unit, and thereby ratified, confirmed and adopted said agreement. During all of said period, Respondent has fully performed all of the provisions of said agreement on its part agreed to be performed.



*General Counsel's Exhibit No. 1-K—Answer*

Wherefore, Respondent prays that the complaint be dismissed.

(s) James C. Davis,  
 (s) Squire, Sanders & Dempsey,  
 1857 Union Commerce Building  
 Cleveland 14, Ohio,  
 Telephone: MAin 1-5620,  
 Attorneys for Respondent,  
 Wooster Division,  
 Borg-Warner Corporation,  
 Wooster, Ohio.

State of Ohio )  
 County of Cuyahoga ) SS.

James C. Davis, being first duly sworn, says that he is a duly authorized attorney for Respondent and is duly authorized to make this verification; that he has read the foregoing Answer; and that the facts and allegations contained therein are true as he verily believes.

(s) James C. Davis

Sworn to and subscribed before me and in my presence at Cleveland Ohio, this 13th day of April, 1954.

My commission expires Sept. 17, 1955.

(s) John J. Adams,  
 Notary Public, State of Ohio.

I hereby certify that on April 13, 1954, I served a copy of the foregoing answer upon International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, by placing a copy of the same in the United States mail, postage prepaid, addressed to International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, 2082 East 4th Street, Cleveland, Ohio.

(s) James C. Davis

*General Counsel's Exhibit No. 1-K—Answer***Power of Attorney**

Know all men by these presents that Wooster Division, Borg-Warner Corporation does hereby appoint James C. Davis and Squire, Sanders and Dempsey, 1857 Union Commerce Building, Cleveland 14, Ohio, its attorneys to appear on behalf of and to represent Wooster Division, Borg-Warner Corporation before the National Labor Relations Board and to prepare, execute, verify and file answers, motions, pleadings and papers on its behalf.

Wooster Division,  
Borg-Warner Corporation,  
By (s) Harry E. Blythe,  
President and General Manager.

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**GENERAL COUNSEL'S EXHIBIT No. 3-A**

Case No. 8-CA-830

United States of America  
National Labor Relations Board

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**AGREEMENT FOR CONSENT ELECTION**

Pursuant to a Petition duly filed under Section 9 of the National Labor Relations Act as amended, and subject to the approval of the Regional Director for the National Labor Relations Board (herein called the Regional Director), the undersigned parties hereby waive a hearing and agree that an election by secret ballot is to be held under the supervision of the said Regional Director, among the employees of the undersigned Employer in the unit

*General Counsel's Exhibit No. 3-A*

defined below, at the indicated time and place, to determine the proposition check below. (Check appropriate box.)

- ☒ Representation Election: Whether or not such employees desire to be represented for the purpose of collective bargaining by (one of) the undersigned labor organization(s).
- ☐ Union Shop Election: Whether or not such employees desire to authorize the undersigned Union, which is their present collective bargaining representative, to make an agreement with the undersigned Employer requiring membership in such Union as a condition of continued employment.

The Parties Hereby Further Agree As Follows:

1. Election.—Such election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the customary procedures and policies of the Board, provided that the determination of the Regional Director shall be final and binding upon any question, including questions as to the eligibility of voters, raised by any party hereto relating in any manner to the election.

2. Eligible Voters.—The eligible voters shall be those employees included within the Unit described below, who appear on the employer's payroll for the period indicated below, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off; and employees in the Armed Forces of the United States who present themselves in person at the polls, but excluding any employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election and any employees on strike who are not entitled to reinstatement.

*General Counsel's Exhibit No. 3-A*

At a date fixed by the Regional Director, the Employer will furnish to the Regional Director an accurate list of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility.

3. Notices of Election.—The Regional Director shall prepare a Notice of Election and supply copies to the parties describing the manner and conduct of the election to be held and incorporating therein a sample ballot. The Employer, upon the request of and at a time designated by the Regional Director, will post such Notice of Election at conspicuous and usual posting places easily accessible to the eligible voters.

4. Observers.—Each party hereto will be allowed to station an equal number of authorized observers, selected from among the nonsupervisory employees of the Employer, at the polling places during the election to assist in its conduct, to challenge the eligibility of voters, and to verify the tally.

5. Tally of Ballots.—As soon after the election as feasible, the votes shall be counted and tabulated by the Regional Director, or his agent or agents. Upon the conclusion of the counting, the Regional Director shall furnish a Tally of Ballots to each of the parties. When appropriate, the Regional Director shall issue to the parties a certification of representatives or certificate of results of election, as may be indicated.

6. Objections, Challenges, Reports Thereon.—Objections to the conduct of the election or conduct affecting the results of the election, or to a determination of representatives based on the results thereof, may be filed with the Regional Director within five days after issuance of the Tally of Ballots. Copies of such objections must be served upon the other parties at the time of filing with the Regional Director. The Regional Director shall investigate



*General Counsel's Exhibit No. 3-A*

the matters contained in the objections and issue a report thereon. If objections are sustained, the Regional Director may in his report include an order voiding the results of the election and, in that event, shall be empowered to conduct a new election under the terms and provisions of this agreement at a date, time, and place to be determined by him. If the challenges are determinative of the results of the election, the Regional Director shall investigate the challenges and issue a report thereon. The method of investigation of objections and challenges, including the question whether a hearing should be held in connection therewith, shall be determined by the Regional Director, whose decision shall be final and binding.

7. Run-Off Procedure.—In the event more than one labor organization is signatory to this agreement, and in the event that no choice on the ballot in the election receives a majority of the valid ballots cast, the Regional Director shall proceed in accordance with ~~Section 203.62~~ of the Board's Rules and Regulations.

8. Commerce.—The Employer is engaged in commerce within the meaning of Section 2 (6) (7) of the National Labor Relations Act.

9. Wording on the Ballot.—Only the choice below marked "X" is pertinent to this agreement.

Representation Election:

- ☒ In the event more than one labor organization is signatory to this agreement, the choices on the ballot will appear in the wording indicated below and in the order enumerated below, reading from left to right on the ballot:

First  
UAW-AFL

Second  
Neither

Third  
UAW-CIO

*General Counsel's Exhibit No. 3-A*

Where only one labor organization is signatory to this agreement, the name of the organization shall appear on the ballot and the choice shall be "Yes" or "No".

## Union Shop Election: \_\_\_\_\_

- ☐ Do you wish to authorize the union which is your present collective bargaining representative to enter into an agreement with your employer which requires membership in such union as a condition of continued employment?

10. Payroll Period For Eligibility.—The week ending Nov. 22, 1952.

11. Date, Hours, And Place of Election.—December 11, 1952, 3:30 p.m. to 4:30 p.m., Test Dept. Room.

12. The Appropriate Collective Bargaining Unit.—All production and maintenance employees, including plant clerical employees, stock and tool handlers, excluding all Production Control Dept. employees, Industrial and Product Engineering Dept. employees, Statistical quality control Dept. employees, timekeepers and checkers, laboratory employees, all office employees and office clerical employees, nurses, professional employees, guards, and supervisors as defined in the Act.

International Union, United Automobile Workers of America, AFL  
(Petitioner)

By (s) Ted Weiss, Reg. Rep.

International Union, United Automobile, Aircraft & Agricultural Implement Workers of America,  
CIO

By (s) Russell W. Roback,  
Int'l Rep. UAW-CIO

Case No. 8-RC-1842

*General Counsel's Exhibit No. 3-A*

Wooster Division of  
Borg-Warner Corporation  
(Employer)

By (s) G. A. Barker, Pers. Mgr.

Date executed November 26, 1952

Recommended:

(s) Bernard Ness,  
Atty.,  
National Labor Relations Board.

Date approved November 26, 1952

(s) John A. Hull, Jr.,  
Regional Director,  
National Labor Relations Board.

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**GENERAL COUNSEL'S EXHIBIT 3-B**

United States of America  
**NATIONAL LABOR RELATIONS BOARD**

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In the Matter of

Wooster Division of Borg-Warner Corporation  
and

International Union United Automobile Workers  
of America, AFL

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Case No. 8-RC-1842

Date issued December 11, 1952

Type of election (Check one):

- ☒ Consent  
☐ Stipulated  
☐ Board ordered

*General Counsel's Exhibit No. 3-B***TALLY OF BALLOTS**

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

- |  |    |
|--|----|
| 1. Approximate number of eligible voters....   | 95 |
| 2. Void Ballots . . . . .  | 0  |
| 3. Votes cast for International Union, United Automobile Workers of America, AFL.....  | 45 |
| 4. Votes case for . . . . .  | xx |
| 5. Votes case for International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO.....   | 48 |
| 6. Votes cast against participating labor organization(s) . . . . .  | 1  |
| 7. Valid votes counted (sum of 3, 4, 5, and 6)....   | 94 |
| 8. Challenged Ballots . . . . .  | 0  |
| 9. Valid votes counted plus challenged ballots (sum of 7 and 8).....   | 94 |
| 10. Challengers are (not) sufficient in number to affect the results of the election.  |    |
| 11. A majority of the valid votes counted plus challenged ballots has ( <del>not</del> ) been cast for: International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO. |    |

For the Regional Director  
(s) Donald J. Myers



*General Counsel's Exhibit No. 3-B*

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For

International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO

(s) Jack R. Snowbarger

For

For

International Union, United Automobile Workers of America, AFL

(s) John J. Fusi

For

(s) Richard J. Uhl

**GENERAL COUNSEL'S EXHIBIT No. 3-C**

United States of America  
**NATIONAL LABOR RELATIONS BOARD**  
 Case No. 8-RC-1842

In the Matter of  
 Wooster Division of Borg-Warner Corporation, Employer,  
 and  
 International Union, United Automobile Workers  
 of America, AFL, - - - - - Petitioner,  
 and  
 International Union, United Automobile, Air-  
 craft & Agricultural Implement Workers of  
 America, CIO, - - - - - Intervenor.

**CERTIFICATE OF REPRESENTATIVES**

Pursuant to the terms and provisions of the Agreement for Consent Election entered into by and between the parties in the above-entitled matter, the undersigned Regional Director of the National Labor Relations Board conducted an election by secret ballot as therein provided. No objections were filed to the Tally of Ballots furnished to the parties, or to the conduct of the election.

Pursuant to authority vested in the undersigned by the Agreement for Consent Election and by the National Labor Relations Board, it is hereby certified that a majority of the valid ballots has been cast for International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, and that pursuant to Section 9 (a) of the National Labor Relations Act said organization is the exclusive representative of all the employees in the unit defined in the Agreement for Consent Election for the

*General Counsel's Exhibit No. 3-C*

purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Cleveland, Ohio, on the 18th day of December, 1952.

On behalf of  
National Labor Relations Board  
(s) John A. Hull, Jr.,  
Regional Director for 8th Region,  
National Labor Relations Board.

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**GENERAL COUNSEL'S EXHIBIT No. 4****AGREEMENT**

This Agreement entered into between the Wooster Division, of the Borg Warner Corporation of Wooster, Ohio (hereinafter referred to as the "Company"), and the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America and its Local Union No. 1239, U.A.W.-C.I.O. (hereinafter referred to as the "Union").

**Recognition**

1. (a) The Company recognizes the Union, as the sole and exclusive bargaining agent for all employees in matters pertaining to rates of pay, wages, hours of work and other conditions of employment during the term of this Agreement.

\* \* \* \* \*

*General Counsel's Exhibit No. 4*SECOND PARTIAL REPORT TO LOCAL 1239 UAW-CIO  
BARGAINING COMMITTEE

January 19, 1953

\* \* \* \* \*

39. (a) A properly executed copy of such Authorization for Check-off Dues form for each employee for whom union membership dues are to be deducted hereunder, shall be delivered to the Industrial Relations Department before any payroll deductions are made. Any authorization for Check-off of Dues which is incomplete or in error will be returned to the Union by the Company.

\* \* \* \* \*

53. This Agreement shall remain in effect until \_\_\_\_\_, 1954.

For the Union:

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For the Company:

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PROPOSAL OF LOCAL 1239 UAW-CIO

To

Wooster Division of Borg-Warner Corporation  
Wage Schedule

\* \* \* \* \*



**GENERAL COUNSEL'S EXHIBIT No. 5-A**

WOOSTER DIVISION  
Borg-Warner Corporation  
P. O. Box 394  
Wooster, Ohio

February 9, 1953

Bargaining Committee,  
Local Union 1239, UAW-CIO,  
Wooster, Ohio

Gentlemen:

Attached is the Company's counter-proposal to the Union's contract proposal received by the company two weeks ago. This counter-proposal is the result of our serious consideration of the various items contained in the Union's request.

We have put special-emphasis on items which encourage proper settlement of all disputes without the necessity of either the employees or the Union to make the sacrifices brought on by strikes. Our counter-proposal still permits a strike if the employees wish to follow that course after all sincere efforts at settlement have failed. But emphasis has been put on the mechanics for settlement, rather than in invitations to strike.

In addition to our emphasis on prompt and proper settlement of all disputes which might arise, we have done three other things: 1—organized the content of the agreement so that any item covered can be found readily, 2—simplified the language so that every employee can understand not only what it says, but also what it means; and, 3—adapted the agreement to a plant of our size in an area like Wooster.

Virtually all of the subject matter in the union proposal is covered in the attached counter-proposal. Those items

*General Counsel's Exhibit No. 5-A*

which have been omitted, in general, are those which in our opinion do not fit any real specific need in this plant. Their omission from this draft does not indicate in any way an unwillingness to discuss them in negotiations. Rather it indicates our conviction that we should concentrate on those matters which are of real importance to the establishment of a fair and workable relationship of the Company, its employees, and the Union.

Economic items which we expect to meet realistically have been marked "To be negotiated." Up to the present time we do not have sufficient information to make a sound counter-proposal on those items, and we knew you agreed that in any case the other provisions should be settled first. We anticipate, however, that all of the necessary factors will be developed during negotiations, so there can be a solid basis for eventual agreement.

Machinery for disputes settlement includes several different items: Union representation through its Stewards and officers, with members of the Union Committee meeting at regular intervals for the prompt settlement of disputes;

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**GENERAL COUNSEL'S EXHIBIT No. 5-B**

a clean-cut grievance procedure, terminating in arbitration on all matters except rates of pay and production standards, with the right to strike on those matters not subject to arbitration, after full and complete negotiations have been concluded, and after the employees themselves have had the opportunity to freely express themselves on the matter.

You will note that in addition to those items which are designed to promote prompt and fair settlement of all disputes, other items normally found in a labor agreement are covered.

*General Counsel's Exhibit No. 5-B*

Our counter-proposal also provides security to the Union in the form of Checkoff of Union Dues and Initiation Fees.

It also provides security to the employees in many different respects: 1—Seniority provisions which protect an employee within his own department; 2—Security in the equitable distribution of overtime; 3—Security against company lock-outs; 4—Security of Job Opportunity, through provisions to encourage promotions from within; 5—Security from unwarranted changes in production standards; 6—Health and safety security through not only policy declarations on the subject, but through an integrated insurance program paid for, in part, by the company; 7—Security for Military Veterans, to protect all their job rights; 8—Security against discrimination by either the Company or the Union; and many others.

In addition, there are provisions to permit leaves of absence, Holiday Pay, overtime premium pay, shift premium pay, reporting pay, Union bulletin boards, and many others.

This is the first contract in a brand new plant, and as such, is of utmost importance to every employee and to us. We trust that the Union will join with us in our effort to negotiate a fair contract which will provide the basis for sound, stable labor relations, free from unnecessary disputes and disturbances, and in the interests of all of the employees of the Company.

Very truly yours,  
Wooster Division,  
Borg-Warner Corporation,  
(s) N. E. Seymour,  
Works Manager.

NES . . . bjs

cc: . . . Herbert J. Pappin, International Representative

**GENERAL COUNSEL'S EXHIBIT No. 5-C****AGREEMENT**

It is the intent and purpose of the parties to this Agreement to promote and improve industrial and economic relationships between the employees covered in this Agreement and the Company, and to set forth herein the basic agreement governing rates of pay, wages, hours of work, and other conditions of employment.

The Company and the Union encourage the highest possible degree of friendly, cooperative relationship between their respective representatives at all levels and with and between all employees. The officers of the Company and the Union realize that this goal depends on more than words in a labor agreement; that it depends primarily on attitudes between people in their respective organizations, and at all levels of responsibility. They believe that proper attitudes must be based on full understanding of, and regard for, the respective rights and responsibilities of both the Company and the Union; they believe also that proper attitudes are of major importance in the plant where day-to-day operations and administration of this Agreement demand fairness and understanding. They believe that these attitudes can be encouraged best when it is made clear that the Company and Union officials whose duties involved negotiation of this Agreement are not anti-Union or anti-Company, but are sincerely concerned with the best interests and well-being of the business and all employees.

This Agreement is therefore entered into by and between the Wooster Division, Borg-Warner Corporation (herein referred to as the Company) and Local Union No. 1239, affiliated with the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO).



*General Counsel's Exhibit No. 5-C*

1. Recognition and Description of Unit

1.1. The Company recognizes the Union as the exclusive bargaining agent for the employees which it represents in matters pertaining to rates of pay, wages, hours of work and other conditions of employment, during the term of this Agreement.

1.2. The certification dated December 18, 1952 of the National Labor Relations Board provides that the Union represents the following employees:

Production and Maintenance Employees  
Plant Clerical Employees  
Stock and Tool Handlers

1.3. This certification provides that the Union does not represent the following employees:

Production Control Department Employees  
Industrial and Production Engineering Department Employees  
Statistical Quality Control Department Employees  
Timekeepers and Checkers  
Laboratory Employees  
Office Employees  
Office Clerical Employees  
Nurses  
Professional Employees  
Guards  
Supervisors as defined in the National Labor Relations Act, as amended.

. . . . .

3. Union Security

3.1. During the life of this Agreement, the Company agrees to deduct Union membership dues levied by the Union in accordance with the constitution and by-laws of the Union, from the pay of each employee who executes or

*General Counsel's Exhibit No. 5-C*

has executed the following Authorization for Check Off  
of Dues form:

## Authorization for Check Off of Dues

Clock No. \_\_\_\_\_

Soc. Sec. No. \_\_\_\_\_

Dues Card No. \_\_\_\_\_

To Wooster Division, Borg-Warner Corporation

Date \_\_\_\_\_

I hereby assign to Local Union No. 1239, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, (UAW-CIO), from any wages earned or to be earned by me as your employee, the sum of Two Dollars and Fifty Cents (\$2.50) per month and initiation fees and assessments or such amount as may hereafter be established by the Union and become due to it, as my membership dues in said Union. I authorize and direct you to deduct such amounts from the first pay received by me in each month and to remit the same to the Union. This assignment, authorization and direction shall become effective on the date it is signed by me and, unless sooner revoked as hereinafter provided, shall continue in effect so long as the Agreement between you and the Union, dated \_\_\_\_\_, 1953, continues in effect.

This assignment, authorization and direction is given by me voluntarily and may be revoked by me at any time by giving you written notice of such revocation in the manner provided in said Agreement.

---

 Signature of Employee

---

 Type or print name of employee here
 

. . . . .

**GENERAL COUNSEL'S EXHIBIT No. 6****UNION COUNTER PROPOSAL  
AGREEMENT****Preamble**

\* \* \* \* \*

3rd Par. Union proposes the following:

This Agreement is therefore entered into by and between the Wooster Division, Borg Warner Corporation (herein referred to as the Company) and the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America and its local Union No. 1239, UAW-CIO (hereinafter referred to as the "Union").

1. (a) Union agrees to Company proposal (1.1) of 2/16/53.
- (b) Union agrees to Company proposal (1.2) and (1.3) of 2.k6.53.

\* \* \* \* \*

**GENERAL COUNSEL'S EXHIBIT No. 7****PROPOSAL FOR SETTLEMENT**

Having explored thoroughly all the matters still at issue after twelve bargaining sessions with the Union, the Company now is prepared to summarize a "package proposal" for settlement of all issues, in the hope that such a proposal will speed mutual agreement on these important matters.

This proposal is in two parts—economic and non-economic. Each will be treated separately, although the economic offer is made contingent on the satisfactory settlement of all other issues within the framework outlined.

*General Counsel's Exhibit No. 7*

In the preparation of this wage offer we have tried to do two things:

1—To preserve the maximum opportunity for the employees in this plant, by maintaining rate schedules which will permit new business to be obtained which will provide more and better jobs for our employees:

2—To provide the best average wage schedules in this community. We would be short sighted indeed if we priced ourselves out of a large potential market—and therefore limited the opportunity of our employees—by setting wage schedules which might look more attractive at the moment, but which would eventually deprive our employees of more and better jobs.

In making this economic offer the Company decided to hold nothing back. Frequently companies "hold out" a few cents from their economic offer, so that there will be something left to "bring the employees back" in the event of a strike. In this case the Company decided that it would add those few cents now, rather than after a strike, in order to save the employees from having to strike to get it.

The amount of this wage offer is the same amount that would be offered after a strike: there has been nothing held back. There can be no incentive to strike for more.

So we must keep these three things in mind:

- 1—This offer is made contingent on the settlement of all other issues within the framework outlined herein;
- 2—This is a "package" offer; and
- 3—Nothing has been held back from this economic offer for further bargaining or to respond to future pressures.



*General Counsel's Exhibit No. 7*

Our economic proposal covers the following:

(1) Wage Increases: An increase of 15c per hour to each employee. A schedule of rates for all jobs is attached.

Reference: Section 6

(2- Health & Welfare Benefits: Continuation for eligible employees of the existing health and welfare program on the present basis of joint contributions by employee and employer. These benefits include:

(a) Group Life Insurance—\$2,000.00.

(b) Weekly Sickness & Accident Benefit—\$30.00 per week.

(c) Daily Hospital Benefit—Up to \$10.00 per day.

(d) Daily In-Hospital Medical Benefit—\$4.00 per day.

(e) Surgical Benefit—Up to \$200.00.

Reference: Section 23.4.

(3) Overtime Premium: Overtime or premium pay as follows:

(a) Time and one-half for hours worked

(1) Over 8 hours per day.

(2) Over 40 hours per week.

(3) On Saturday.

(b) Double time for hours worked

(1) On Sunday

(2) On Holidays

Reference: Section 9.1.

(4) Shift Premium: Shift premium for hours worked on the 2nd shift and 3rd shift as follows:

2nd Shift—6c per hour

3rd Shift—9c per hour

*General Counsel's Exhibit No. 7*

Reference: Section 9.3.

(5) Report Pay: Report pay equal to 4 hours of work or 4 hours of pay at the employee's regular straight time hourly rate.

Reference: Section 9.4.

(6) Paid Holidays: Holiday pay (8 hours at straight time hourly rate) to eligible employees who do not work on New Year's Day, Decoration Day, July 4th, Labor Day, Thanksgiving Day and Christmas.

Reference: Section 11.

(7) Paid Vacations: Vacation pay to eligible employees as follows:

Continuous Service on May 1st	Vacation	Vacation Pay
6 months but less than 1 year...	2 days	16 hours
1 year but less than 5 years.....	1 week	40 hours
5 years but less than 15 years...	2 weeks	80 hours
15 years or over.....	3 weeks	120 hours

Reference: Section 12.

(8) Clean-up Time: Machine operators will be allowed the last 5 minutes of their scheduled shift to clean their machines and work area.

(9) Progression and Merit Increases: A learner will be reviewed for merit increases, prior to the time he becomes an operator, upon completion of each of the following periods after his employment: 2 months, 1 month, 1 month, 1 month, 1 month, and at 2 months intervals thereafter until he reaches the minimum operator's rate for his job classification.

An operator will be reviewed for merit increases 3 months after he first received the minimum rate for his job classification and at 3 months intervals thereafter until he reaches the maximum operator's rate for his classification.

## General Counsel's Exhibit No. 7

Reference: Section 7.

(10) Effective Date and Duration: This economic proposal and the entire contract shall become effective at the start of the first payroll period after the date on which the contract is signed, and shall remain in effect for a period of one (1) year after its effective date.

This economic proposal is in full settlement of all economic requests or demands made by the Union, and, as stated in the beginning, is contingent upon agreement upon all non-economic issues within the framework of the Company's proposal for settlement of all non-economic issues.

		Setup <sup>a</sup> or Lead Man	A	B
11—Automatics—Multi-Spindle				
Operator . . . . .		2.10-1.96	1.95-1.81	1.80
Helper . . . . .			1.65-1.50	
26—Burring				
General Burrin	} . . . . .	1.70-1.56	1.55-1.40	
Water Lox				
Hydro-Burst Test				
Washing Machine . . . . .			1.50-1.35	
Hand Burr . . . . .			1.30-1.15	
Parts Masker . . . . .			1.30-1.15	
27—Drill Press				
All Types . . . . .		1.85-1.71	1.70-1.56	1.55
21—Gear Cutting				
Gear Cutter . . . . .		1.95-1.81	1.80-1.66	1.65
Broach & Honing . . . . .			1.65-1.51	1.50
Semi-Auto. Lathe . . . . .			1.75-1.61	1.60
20—Grinders				
General . . . . .		1.95-1.81	1.80-1.66	1.65
Internal . . . . .			1.75-1.61	1.60
External . . . . .			1.75-1.61	1.60
Centerless . . . . .			1.75-1.61	1.60
Thread . . . . .			1.75-1.61	1.60

## General Counsel's Exhibit No. 7

	Setup Lead Man	A	B
Surface.....		1.70-1.56	1.55
Center Lap—Gear Buff & Polish.....		1.55	
22—Lathes.....		1.70-1.56	1.55
25—Milling.....	1.95-1.81	1.80-1.66	1.65
Boremetrics.....	1.95-1.81	1.80-1.66	1.65
36—Testing			
Booster—Fuel.....	1.90-1.76	1.75-1.61	1.60
Hydraulic (All).....		1.70-1.56	1.55
12—Turret Lathe—Chuckers....	1.95-1.81	1.80-1.66	1.65
13—Turret Lathe—Bar.....	1.95-1.81	1.80-1.66	1.65
30—Assembly			
Pump Assembler.....	1.85-1.71	1.70-1.56	1.55
Pump Sub-Assembler			
Seals—Couplings, etc....		1.35-1.20	
Non-Prod.			
51—Inspection			
Tool Inspector.....		2.00-1.86	1.80
Gage.....		1.95-1.81	1.80
Sample Casting.....		1.90-1.76	1.75
Process.....		1.80-1.66	1.65
Receiving.....		1.70-1.55	
Shipping.....		1.70-1.55	
Bench			
Magnaflux, etc. }			
		1.70-1.55	
Bearing.....		1.40-1.25	
Parts Stamper.....		1.30-1.15	
58—Maintenance			
Carpenter.....	1.90-1.76	1.75-1.61	1.60
Ch. Electrician.....		2.05-1.90	
Electrician.....	1.90-1.76	1.75-1.61	1.60
General Maintenance.....	1.90-1.76	1.75-1.61	1.60
Maint. Helper & Yardman...		1.55-1.40	
Machine Repair.....	2.05-1.91	1.90-1.76	1.75
Machine Oiler.....		1.55-1.40	



*General Counsel's Exhibit No. 7*

	Setup or Lead Mah	A	B
52—Receiving			
Receiving Clerk . . . . .	1.70-1.56	1.55-1.40	
Truck Driver . . . . .		7.70-1.55	
58—Sanitation			
Laborer . . . . .	1.55-1.41	1.40-1.25	
Chip Collector . . . . .		1.30-1.15	
Chip Dryer . . . . .		1.40-1.25	
Janitor . . . . .		1.35-1.20	
Sump Tank Operator . . . . .		1.35-1.20	
Sweeper . . . . .		1.35-1.20	
54—Tool Crib			
Tool Crib Attendant . . . . .	1.80-1.66	1.65-1.51	1.50
Tool Crib Clerk . . . . .		1.45-1.40	
50—Tool Grind			
Gen. Tool Grinder . . . . .	2.05-1.91	1.90-1.76	1.75
Cutter Hob & Tap Grinder . . . . .		1.70-1.56	1.55
Single Point Grinder . . . . .		1.65-1.51	1.50
50—Tool Room			
Bench Hand . . . . .		2.05-1.91	1.90
Precision Welder . . . . .		2.00-1.86	1.85
Jib Borer & Man. au-trol. . . . .		1.95-1.81	1.80
Engine Lathe . . . . .		1.90-1.76	1.75
Milling . . . . .		1.85-1.71	1.70
Uniy. Grinder . . . . .		1.90-1.76	1.75
Drill Press . . . . .		1.80-1.66	1.65
Shaper . . . . .		1.80-1.66	1.65
41—Anodize & Plate . . . . .	1.95-1.81	1.80-1.66	1.65
40—Heat Treat . . . . .		1.75-1.61	1.60
55—Gen. Stores			
Stockkeeper . . . . .		1.65-1.50	
53—Rgh. & Fin. Stores			
Fin. Trucker . . . . .		1.50-1.35	
Fin. Stockkeeper . . . . .		1.55-1.40	
Rgh. Stockkeeper Clerk . . . . .		1.60-1.45	
Rgh. Stockman . . . . .		1.60-1.45	
Casting Cleaner . . . . .		1.55-1.40	

**GENERAL COUNSEL'S EXHIBIT No. 8****SETTLEMENT PROPOSAL—PART TWO****(Non-Economic Items)**

The economic proposal was offered contingent upon settlement of all non-economic issues within the framework of an outline to be presented separately as the second part of the total "package proposal". Following is an outline of the area in which agreement can be reached on all non-economic items in the agreement.

**PREAMBLE—PARTIES TO THE AGREEMENT**

The Company has proposed that the contract be made between the local Union and the Company. The Union demands that the International be the principal party to the contract.

The local Union is most familiar with the employees, the operations, the working conditions, and the local community situation. The local union will have to live with the results of these negotiations. Therefore, the local Union should have the right to make its own agreement.

Just before the election last December, the Union gave the employees a leaflet in which the employees were told:

"You will have your own charter, your own local Union, your own contract . . . ."

The Union should agree that the employees should not be deprived of the right to make and sign their own contract. The Company urges that this section be settled by permitting the local Union to sign its own agreement in its own name.

*General Counsel's Exhibit No. 8***SECTION 3—UNION SECURITY**

The Company has agreed to deduct and pay to the Union the dues of every employee who requests that this be done. The Union demands that the Company force every employee to join the Union or lose his job. The Company recognizes that employees are perfectly willing to be properly led. It also recognizes that the normal employee resents being pushed.

The Company agrees that employees must be free to join hands voluntarily in Union organization. The employees should not be handcuffed together against their will. The Company urges the Union to accept the Company's proposal, just as the UAW-CIO accepted a similar proposal from the Kohler Company just last month.

**SECTIONS 5.1, 5.2 & 5.3—INTERFERENCE, DISCRIMINATION, COERCION, ETC.**

The Company readily agreed to the Union's request for assurance that the Company will not discriminate or coerce or interfere with the employees in connection with their membership in the Union, or Union activity. The Company asks the Union likewise to assure the employees that the Union will not discriminate or coerce or interfere with the employees if they do not join the Union, or if they do not engage in Union activities. The Union should be willing to give this assurance by accepting the Company's proposal.

**SECTIONS 5.4 THROUGH 5.8—SETTLEMENT OF DISPUTES**

The Company has asked the Union to join in establishing a peaceful means for settling disputes. This would include:

*General Counsel's Exhibit No. 8*

- 1—Clear definition of the issues in dispute, and informing the employees of those issues.
- 2—A reasonable period of good faith bargaining by both the Company and the Union.
- 3—A chance for all employees to vote on the issues, before a strike takes place.
- 4—Agreement that there will be no strikes if the issue is subject to arbitration.

The Union, too, should want a clear definition of the issues, and a period of good faith bargaining. The Union should not object to a vote by all employees when all employees are affected by a strike.

The Union and the Company both agreed that the NLRB election last December be held on the Company premises. An issue over which a strike is threatened is certainly just as important. The UAW-CIO has recognized this by including a vote of all employees in another contract, because the responsible UAW-CIO officials in that case recognized that a well disciplined minority could and did stack Union meetings and call unwarranted strikes.

The Company urges the Union to protect the majority of the employees and itself against this possibility of having a minority call unwarranted strikes, by agreeing on this means of settling disputes peacefully.

## SECTIONS 8.2 & 8.4—CHANGES IN SHIFT AND SCHEDULED HOURS

Attached are proposals in which the Company makes clear its readiness to negotiate with the Union concerning these subjects. These proposals should dispose of these issues.



*General Counsel's Exhibit No. 8***SECTION 10—UNION REPRESENTATION ON OVERTIME WORK**

The only point in dispute is whether the President and Chief Shop Steward must be called in to work every time when Saturday and Sunday overtime work is being performed.

The Company has agreed to Union representation by district stewards in connection with Saturday and Sunday overtime work. It has also agreed that the President and Chief Shop Steward have ready access to the plant when the need arises. The Company is not persuaded that additional Union representatives should be given overtime work beyond what they normally would receive as their share in rotation with other employees.

**SECTIONS 13 & 14—SENIORITY AND JOB OPPORTUNITY**

These provisions are largely settled. The attached proposal concerning Job Opportunity should settle Section 14. The few remaining points in dispute concerning Seniority should be settled without the need for uprooting many employees or hampering plant operations.

**SECTION 15—GRIEVANCE PROCEDURE**

Only the following points are in dispute:

- 1—The right of an employee to present a grievance individually.
- 2—Time limits on appeals of grievances.
- 3—Frequency of Union-Management meetings.
- 4—Mechanics for investigating and processing grievances, and pay to Union representatives for doing this.

*General Counsel's Exhibit No. 8*

Settlement of these issues can be reached within the following framework:

- 1—The Union should not object to a provision which permits an employee to present a grievance individually as provided by law. The UAW-CIO agreed to a similar provision in the Kohler Company contract just last month.
- 2—Time limits on appeals of grievances guarantee that grievances will be promptly presented and settled. Grievances should not be allowed to accumulate so that many minor problems become one large dispute. The Company is willing to agree to answer grievances within definite time limits. The Union should be willing to agree here to the same time limits it accepted in the Kohler Company contract just last month, and in several other UAW-CIO contracts.
- 3—The Company has agreed to regular meetings every other week and more often in case of emergency. This should be sufficient.
- 4—The Company has attached a proposal for settling the basis upon which Union representatives may leave their regular jobs during working hours to investigate or process grievances. This proposal also provides for payment of lost time in meetings called by the Company. Similar provisions are contained in a number of UAW-CIO contracts.

**SECTION 16.4—LEAVES OF ABSENCE**

The only point at issue is a leave of absence for an employee in case a member of his immediate family is ill. The Company believes this point is covered by Section 16.3 which permits leaves of absence and accumulation of seniority in proper cases.

*General Counsel's Exhibit No. 8***SECTIONS 16.7, 16.8 & 16.9—SPECIAL LEAVES OF ABSENCE**

The Company has agreed to grant leaves of absence to hold Union office, to act as a Union Delegate, and to hold public office. Fairness to other employees and consideration for the operating problems of a small plant and small work force, require reasonable limitations as to the duration of such leaves and the number of employees who are absent at any one time. Settlement of this issue should be possible on the basis the Company has proposed.

**SECTION 19—TRANSFERS OF EMPLOYEES**

The Company has agreed to provisions protecting the rates of employees who are transferred for brief periods to take care of absenteeism, and other practical operating problems.

With the small plant and small work force here at Wooster, the Union should not hamper efficiency by restricting such transfers.

**SECTION 22.2—DISTRIBUTION OF LEAFLETS**

The Company's proposal is found in other UAW-CIO contracts, and should be acceptable to the Union.

**SECTION 23.3—WAIVER CLAUSE**

Both the Union and the Company, through the course of the negotiations, have expressed a desire to attain proper stability of labor relations during the term of the contract. One essential to this stability is the assurance that new demands for negotiations on subject matter not included in this agreement will not be made. The Company has agreed to withhold any demands it might have until the next contract, and urges the Union to do the same. A majority of the employees covered by UAW-

*General Counsel's Exhibit No. 8*

CIO contracts work under a contract with this provision in it.

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This proposed framework for settlement of all non-economic issues is in full settlement of all non-economic requests or demands by the Union, and is contingent upon agreement upon the Company's proposal for settlement of all economic issues.

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**GENERAL COUNSEL'S EXHIBIT No. 9**

The following are the changes and modifications proposed to the Company by the negotiating committee in an attempt to avert this strike.

(1)

That the agreement be between the Company and International Union U.A.W.-C.I.O. and Local 1239 U.A.W.-C.I.O.

(2)

Modified union shop and irrevocable check off of dues and initiation fees.

(3)

The no strike clause as originally proposed by the union.

(4)

Call-in-Pay shall be (4) hours except in cases beyond the control of the Company, namely, power failure, air failure, steam failure and so-called ACTS OF GOD.

(5)

That the Company will provide some method of representation in the second step of Grievance procedure on Saturday and Sunday overtime.



*General Counsel's Exhibit No. 9*

(6)

No time limit in instituting or appealing of grievances.

(7)

Regular meetings between the Company and the Union Committee shall be held every 2 weeks and every week if necessary, with a provision for emergency meetings and a half hour before such meetings for the Union Committee.

(8)

The Company shall pay lost time for the handling of legitimate investigating and processing of Grievances in the first and second steps.

(9)

A provision that will not permit the Company from temporarily transferring an employee from one classification to another without his or her consent.

(10)

That employees will be given the benefit of the higher rate to promotions after (5) working days.

(11)

Waiver clause to be withdrawn from the agreement.

(12)

Seniority—The toolmaker and the maintenance occupational groups shall be separate and distinct from the production occupational groups and promotions shall not be allowed between one and the other.

(13)

The Company shall provide the right for employees who are layed off from their production occupational groups (to transfers to other production occupational groups) providing they have had previous experience or training

*General Counsel's Exhibit No. 9*

in related skill either with the Company or another employer.

(14)

Wash-up period of (5) minutes.

(15)

The Union will drop their position of time and one half before and after the regular starting and quitting time and retain our position on double time after (10) hours during the work week and after (8) hours on Saturday.

(16)

The Union will drop their position on jury duty.

(17)

Night shift premium—(2nd) shift 5%  
(3rd) shift 7½%

(18)

The Union will withdraw it's position for a pension program.

(19)

The Union will accept the Company's present Insurance program.

(20)

The learners starting rate for both male and female employees shall be not greater than (15c) below the minimum of the job classification to which he is assigned with an automatic increase every (60) days until the minimum is reached of the job classification.

(21)

Vacation—All employees shall receive on their anniversary date of employment, (2½%) of their earnings prior to each anniversary date and one week vacation.

*General Counsel's Exhibit No. 9*

(22)

The Company shall grant a (30c) an hour wage increase across the board retroactive to December 18th, 1952.

(23)

Wages shall be subject to negotiations to be reopened at any time during the contract term on (60) days notice by either party.

(24)

The Union will drop it's position for a cafeteria.

(25)

Leaflets—No reference shall be made in the contract covering the distribution of leaflets.

(26)

There shall be a provision during the contract year for the negotiations of a skilled trades program.

(27)

There shall be a job classification and rate established for a fireman.

(28)

The Union will accept the restrictions for qualifying for (Holliday Pay) that are set forth in the (G. M., Chrysler, Ford and Pesco agreement).

(29)

Promotions—The Company shall provide a starting rate for trainees which shall not be lower than the minimum rate of the (B) classification and this rate shall apply to a promotion after the Company has failed to obtain a qualified employee to do the work.

(30)

There shall be not more than (3) bids in a (12) month period except by mutual agreement.

**GENERAL COUNSEL'S EXHIBIT No. 11**

5.4 The Company will not institute a lockout during the period of this Agreement.

5.5. (a) The Union agrees that there will be no strike, work stoppage, interruption, impeding, or slow down, of work, with respect to any matter upon which an impartial arbitrator has jurisdiction and authority to rule, or with respect to any other matter until the procedure hereinafter set forth in this Article has been exhausted. No officer or representative of the Union shall cause, instigate, aid or condone any such activity. No employee shall participate in any such activity.

(b) If any employee shall violate the provisions of this Section, he shall be subject to discipline which may include discharge. The discipline or discharge of any employee may be the subject of a grievance under the grievance procedure set forth in this Agreement.

5.6. It is agreed by both the Company and the union that it is their mutual intent to provide peaceful means for the settlement of all disputes that may arise between them. To assist both parties to carry out this intent in good faith, it is agreed that the procedure referred to in Section 5.5 (a), in the case of a matter on which the impartial arbitrator does not have jurisdiction and authority to rule, shall consist of four basic steps to be taken with respect to each dispute, in order to permit the greatest opportunity for satisfactory settlement; such steps shall include (1) exhaustion of the first three steps of the grievance procedure where the dispute involves a grievance; (2) a clear definition of the issue or issues, officially made known to all employees in the bargaining unit; (3) a reasonable period of good faith bargaining on the issues as defined, after such issues have been made known to all employees in the bargaining unit; and



*General Counsel's Exhibit No. 11*

(4) an opportunity for all employees in the bargaining unit to vote, by secret, impartially supervised, written ballot, on whether to accept or reject the Company's last offer, and on any subsequent offers made.

5.7. It is mutually agreed that the definition of issues referred to in Section 5.6 will include the proposals and counter-proposals of each party; that the reasonable period of good faith bargaining referred to in Section 5.6 shall be at least 30 days (less the actual number of days, if any, but not to exceed 15 days, during which the issue or issues in dispute were being processed through the grievance procedure), with full discussion of the issues taking place during that period; and that the secret written ballot referred to in Section 5.6 shall be supervised by a representative of the United States Mediation and Conciliation Service, or by some other party mutually agreed upon by the Company and the Union. The Company and the Union further agree that such a ballot shall be taken on Company premises, at reasonable and convenient times, and with proper safeguards; similar to those observed in NLRB elections, being taken to insure freedom of choice and a fair election.

5.8. It is further mutually agreed that if a majority of employees in the bargaining unit reject the Company's last offer, and the Company makes a subsequent offer within 72 hours from the time the results of the election are known, another secret, impartially supervised, written ballot will be taken within the following 72 hours.

5.9. It is further mutually agreed that the question of whether or not this Agreement is to be amended, modified or terminated is one of the issues subject to vote by such a secret, impartially supervised, written ballot.

*General Counsel's Exhibit No. 11*

This Agreement is therefore entered into by and between the Wooster Division of Borg-Warner Corporation (herein referred to as the Company) and Local Union No. 1239 of United Automobile, Aircraft and Agricultural Implement Workers of America (herein referred to as the Union).

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**GENERAL COUNSEL'S EXHIBIT No. 12-A**

May 2, 1953

**MEMORANDUM OF SETTLEMENT**

The Company and the Union mutually agree to the following:

1. The Company will send the letter attached as Exhibit No. 1 by registered mail, return receipt requested, to each employee who was on the payroll on March 19, 1953, and who has not returned to work prior to the date of this memorandum.
2. The Company now has 59 jobs available. The Company will offer these jobs to the employees listed on Exhibit No. 2, who report for work as provided in the attached letter (Exhibit No. 1). The Union recognizes that the Company will require several days after the latest date set for employees to report for work to fit all of the employees, for whom there are now jobs, into the Company's production and maintenance requirements.
3. If there are employees listed on Exhibit No. 2 who do not report for work as provided in the attached letter (Exhibit No. 1), the Company will offer the jobs thus available to the employees, listed on Ex-

*General Counsel's Exhibit No. 12-A*

hibit No. 3, who report for work as provided in the attached letter (Exhibit No. 1).

4. If an employee listed on Exhibit No. 2 or Exhibit No. 3 refuses to accept the job offered to him, that job shall be offered to another employee, listed on Exhibit No. 3, who reports for work as provided in the attached letter (Exhibit No. 1).
5. Employees, listed on Exhibit No. 3, who report for work as provided in the attached letter (Exhibit No. 1), but for whom jobs are not now available, will be offered work as jobs become available. The period of time allowed under Section 5 for recalling these employees to work shall not extend beyond the 31st day of July, 1953.
6. An employee, listed on Exhibit No. 2 or Exhibit No. 3, who does not report for work as provided in the attached letter (Exhibit No. 1) or who refuses to accept a job when it is offered to him, will be deemed to have quit his employment by the Company.
7. The Company and the Union will execute an agreement, in the form attached to this memorandum as Exhibit No. 4, as promptly as final copies are prepared for signature.
8. The probationary period for all employees is two months. All striking employees will receive credit on their probationary period for time worked before March 20th, 1953. It is fully understood that all striking employees must make up the difference between the days worked before March 20th and the two months of the probationary period, before they are taken off probation.

*General Counsel's Exhibit No. 12-A*

9. Striking employees will have the periods for their next automatic review merit increase extended by the number of calendar days they have been out from work.
10. Presently the night shift has been eliminated and a number of jobs are therefore not in existence. When as and if the night shift is again started qualified striking employees will be given the opportunity for these night shift jobs, subject to Section 5 of this memorandum.
11. The Company will be unable to put back to work at the same time all of the striking employees on Exhibits 2 and 3 who have qualified to return to work under this memorandum of settlement.
12. Employees on Exhibits 2 and 3 who qualify to return to work under this memorandum will be returned to work on basis of seniority.
13. The Union will request the National Labor Relations Board to withdraw, and the Union will not hereafter revive or press, the unfair labor practice charges filed against the Company and now pending in Case No. 8-CA-830. The Union has delivered to the Company an executed form for this purpose and authorizes the Company to deliver it to the Board.
14. All picketing will cease immediately.
15. Because of the unsettled and unstable scheduling of production brought about by the strike and the bringing back to work of striking employees, the Company has the right to work employees overtime in order to balance production regardless of unplaced employees.



*General Counsel's Exhibit No. 12-A*

16. This memorandum of settlement shall be a part of and an addition to the agreement when signed (Exhibit 4).

For the Wooster Division of  
Borg-Warner Corporation.

(s) N. E. Seymour,

(s) G. A. Barker,

(s) Glenn Winters.

For the Local Union No. 1239  
of the International Union,  
United Automobile, Aircraft  
and Agricultural Implement  
Workers of America (UAW-  
CIO).

(s) Homer Butdorff,

(s) Wesley Snoddy,

(s) Donald Huffman,

(s) Jack Snowbarger,

(s) Robert G. Donaldson.

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**GENERAL COUNSEL'S EXHIBIT No. 12-B**

**. EXHIBIT No. 1**

May 1953

**Notice of Report:**

The Company and the Union have reached agreement upon a labor Contract. The picket line has been withdrawn.

You are hereby notified to report to the Manager of Personnel within three (3) days after this notice, if you wish to return to work for the Company.

Jobs are not available at this time for all striking employees. If you report to the Manager of Personnel within three (3) days after this notice, but a job is not immediately available, you will be so advised and your name will be placed on a list for jobs as they become available.

If you do not report to the Manager of Personnel within three (3) days after this notice, or if you refuse a job when

*General Counsel's Exhibit No. 12-B*

it is offered to you, you will be treated as having quit your employment by the Company.

Very truly yours,

Wooster Division

Borg-Warner Corp.

(s) Henry E. Blythe,

President and General Manager.

**GENERAL COUNSEL'S EXHIBIT No. 12-C****EXHIBIT 2**

List of Employees Whose Jobs Have Not Been Replaced  
Or For Whom There Are Job Openings As Of May 1, 1953:

**Dept. 11—Automatics**

Clock No.

Name

8013

Homer Butdorff

8018

Leland Read

8071

Earl Force

8142

Thomas Straits

**Dept. 12—Chuckers**

8014

Donald Huffman

8037

Albert Poulson\*

8043

Robert Ostrom\*

8098

Ivan Bogly

8116

Robert Kindig

8108

Richard Crossen

8121

Clair Weekley

8128

Paul Lifer

8125

Ralph Lifer

**Dept. 13—Bar Machines**

8083

Woodrow Easterday

8108

Alex Erdos

8127

Herbert King

\*Demoted from Leadman to Operator.

*General Counsel's Exhibit No. 12-C***Dept. 20—Grinding**

Clock No.

Name

8069

Paul Eichelberger

8158

Gene Krichbaum

8174

Charles Rock

8180

Bernard Ranville

8208

Royal Alexander

8232

Carl Stringfellow

**Dept. 21—Gear Cutting**

8134

Harold McKee

**Dept. 27—Drill Press**

8028

James Franco

8030

Jack Snowbarger

8060

John Hiller

8081

Eugene Findley

8076

Ernest Wilson

8089

Ralph Riblett

8169

Floyd Frye

8171

George Green

8172

Harry Fittler

8181

Jerald Lance

8198

Kenneth O'Brien

**Dept. 50—Tool Grind**

8038

Donald McCormick

8111

Frank Lengacher

8151

Wayne Hunter

8207

Dale Knox

**Dept. 50—Toolroom**

8008

Robert Donaldson

8010

Wyman Fry

8034

Roswell Amos

8039

Hulon Amos

8048

Lloyd Burnett

8072

Samuel Bowen

8082

Kenneth Lown

8156

Paul Evans

**GENERAL COUNSEL'S EXHIBIT No. 12-D****EXHIBIT 3**

List Of Employees Whose Jobs Have Been Replaced Or  
Whose Jobs Have Been Eliminated As Of May 1, 1953:

Clock No.	Name
Dept. 11—Automatics 8187	Howard Myers
Dept. 12—Chuckers 8126	Henry Boyes
8160	Wallace Totten
8166	Clifford Stanford,
8185	Clinton Crisco
8195	Donald Burnett
Dept. 13—Bar Machines 8130	Louis Goldner
8199	Paul Haidet
Dept. 20—Grinding 8256	Peter Baird
Dept. 21—Gear Cutting 8173	Levi Wilder
Dept. 25—Milling 8140	Ramon Zappone
Dept. 26—Burring 8016	Ira Leaman
8178	Tom Endsley
Dept. 27—Drill Press 8209	Merrill Moutoux
8233	Floyd Smith
8237	John Juchum
Dept. 30—Assembly 8064	Robert Ross
Dept. 41-43—Anodizing & Plating 8046	Emmett Treece
Dept. 49—Shipping 8212	John Ellsperman

*General Counsel's Exhibit No. 12-D*

Clock No.	Name
Dept. 50—Tool Grind	
8218	Richard Atterholt
8239	Russell Pickering
Dept. 50—Tool Room	
8104	George Brettin
8162	Richard McHenry
8164	Michael Juchum
8167	David Kauffman
8211	John Tinkey
Dept. 51—Inspection	
8201	Dean Foster
Dept. 52—Receiving	
8020	Wayne Patterson
Dept. 54—Tool Crib	
8036	Wesley Snoddy
Dept. 58—Maintenance	
8022	John Fath
8021	Charles Myers
8049	William Dilgard
8050	Dorance Frease
8070	Henry Lance
Dept. 58—Sanitation	
8150	Paul Gable
Dept. 26—Burring	
9001	Ola Bittner
9014	Helen Cadmus
9017	Clara Westfall
9018	Margaret Gisinger
9019	Rosanna Brady
Dept. 30—Assembly	
9009	Bernadine Daly
9010	Helen Jeffries
9016	Dorothy Snyder
Dept. 51—Inspection	
9006	Mildred Balm



**GENERAL COUNSEL'S EXHIBIT No. 13****A G R E E M E N T**

Between

The

**WOOSTER DIVISION**

of

**Borg-Warner Corporation**

and

**LOCAL UNION No. 1239**

of

**United Automobile,****Aircraft, and****Agricultural Implement****Workers of America**

★

**Effective March 20, 1953**

\* \* \* \* \*

**AGREEMENT**

It is the intent and purpose of the parties to this Agreement to promote and improve industrial and economic relationships between the employees covered in this Agreement and the Company, and to set forth herein the basic agreement governing rates of pay, wages, hours of work, and other conditions of employment.

The Company and the Union encourage the highest possible degree of friendly, cooperative relationship between their respective representatives at all levels and with and between all employees. The officers of the Company and the Union realize that this goal depends on more than words in a labor agreement; that it depends primarily on attitudes between people in their respective organizations, and at all levels of responsibility. They believe that proper attitudes must be based on full understanding of,

*General Counsel's Exhibit No. 13*

and regard for, the respective rights and responsibilities of both the Company and the Union; they believe also that proper attitudes are of major importance in the plant where day-to-day operations and administration of this Agreement demand fairness and understanding. They believe that these attitudes can be encouraged best when it is made clear that the Company and Union officials whose duties involved negotiation of this Agreement are not anti-Union or anti-Company, but are sincerely concerned with the best interests and well-being of the business and all employees.

This Agreement is therefore entered into by and between the Wooster Division of Borg-Warner Corporation (herein referred to as the Company) and Local Union No. 1239 of United Automobile, Aircraft and Agricultural Implement Workers of America (herein referred to as the Union).

1. Recognition and Description of Unit

1.1. The Company recognizes the Union as the exclusive bargaining agent for the employees which it represents in matters pertaining to rates of pay, wages, hours of work and other conditions of employment, during the term of this Agreement.

1.2. The certification dated December 18, 1952 of the National Labor Relations Board provides that the Union represents the following employees:

Production and Maintenance Employees  
Plant Clerical Employees  
Stock and Tool Handlers

1.3. This certification provides that the Union does not represent the following employees:

Production Control Department Employees

*General Counsel's Exhibit No. 13*

Industrial and Production Engineering Department  
Employees

Statistical Quality Control Department Employees

Timekeepers and Checkers

Laboratory Employees

Office Employees

Office Clerical Employees

Nurses

Professional Employees

Guards

Supervisors as defined in the National Labor Relations Act, as amended.

• • • • •

### 3. Union Security

3.1. During the life of this Agreement, the Company agrees to deduct Union membership dues levied by the Union in accordance with the constitution and by-laws of the Union, from the pay of each employee who executes or has executed the following Authorization for Check Off of Dues form:

#### Authorization For Check-Off Of Dues

Clock No. . . . .

Soc. Sec. No. . . . .

Dues Card No. . . . .

To Wooster Division,

Borg-Warner Corporation:

Date . . . . .

I hereby assign to Local Union No. 1239, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, (UAW-CIO), from any wage earned or to be earned by me

*General Counsel's Exhibit No. 13*

as your employee, the sum of Two Dollars and Fifty Cents (\$2.50) per month and initiation fees and assessments or such amount as may hereafter be established by the Union and become due to it, as my membership dues in said Union. I authorize and direct you to deduct such amounts from the first pay received by me in each month and to remit the same to the Union. This assignment, authorization and direction shall become effective on the date it is signed by me and, unless sooner revoked as hereinafter provided, shall continue in effect so long as the Agreement between you and the Union, dated ....., 1953, continues in effect.

This assignment, authorization and direction is given by me voluntarily and may be revoked by me at any time by giving you written notice of such revocation in the manner provided in said Agreement.

.....  
Signature of Employee

.....  
Type or print name of employee here

• • • • •

**GENERAL COUNSEL'S EXHIBIT No. 14**

This Agreement by and between Wooster Division of Borg-Warner Corporation, Party Of The First Part, and International Union; United Automobile Aircraft and Agricultural Implement Workers of America (UAW-CIO) and Local No. 1239 thereof, Parties Of The Second Part, witnesseth;

It is hereby agreed between the parties that negotiations to conclude a collective bargaining agreement shall be resumed as soon as possible between the parties. It is further agreed that parties of the second party shall limit its number of pickets to five at each of the two entrances to the plaintiff's plant located west of Wooster during the present strike now in progress. It is further agreed that party of the first part shall use only press, radio or mail to contact plant employees within the union's collective bargaining unit. It is further agreed that any and all employees desirous of working at the plaintiff's plant during the period of the present strike shall be permitted ingress and egress to the plant's property without interference by parties of the second part or their pickets. It is further agreed that all employees desirous of entering the company's property for the purpose of working shall be requested to stop at the picket line before crossing it, and the pickets have the right to engage in lawful communication with said employees.

It is further agreed that the temporary restraining order now pending in Case No. 38035 shall be continued for ten days at the end of which time, pending the faithful performance of this contract the petition will be dismissed by the plaintiff at its costs.



*General Counsel's Exhibit No. 14*

In Witness Whereof, the parties hereto by their respective officers hereunto set their hands this 25th day of March, 1953.

Wooster Division of Borg-Warner  
Corporation

Wooster, Ohio

By (s) Harry E. Blythe,  
President

International Union, United Auto-  
mobile, Aircraft and Agricultural  
Implement Workers of America  
(UAW-CIO)

By (s) Russell W. Roback,  
International Representative

Local No. 1239 of said Union

By (s) Homer J. Butdorff,  
President

Signed in the presence of:

(s) Henry Cutchfield

(s) Ralph Rudd

The following General Counsel's Exhibits 15 through 26  
are indicated as pages 75a and 76a.

**GENERAL COUNSEL'S EXHIBIT No. 27**

18 February 1953

To You As An Employee of Wooster Division—

In my daily trips through the plant many of the employees have asked about the contract negotiations between the Company and the Union Bargaining Committees. I have tried to answer your questions frankly, without moving the negotiations from the bargaining table to the shop floor.

It is natural for you to be interested in the progress, for the contract we ultimately agree on will affect you in many ways. So in response to many of your questions, I am enclosing a copy of our counter-proposal to the Union in its entirety.

Enclosed also is a copy of our letter of transmittal to the Union Negotiating Committee. This letter tells in a few words what our proposal contains and is designed to do.

At the start of negotiations, both the Company and the Union agreed that we would reach tentative agreement on individual clauses, subject to final agreement on a complete contract.

Since negotiations began, we have reached agreement with the Union on a number of contract clauses. If you are interested in checking these, they are paragraphs numbered 1.1—1.2—1.3—2.3—2.5—4.1—8.1 8.3—9.1 (a) 1—9.1 (a) 2—13.5—13.6 (a)—13.6 (b)—15.5—15.6—15.6 (b)—15.6 (c)—15.6 (d)—16.10 (b)—16.10 (c) 2—18.1—18.2—18.4—20.1—20.2—20.3—20.4—21.1—21.2—21.3—21.4—23.1 and 23.2.

In addition, through negotiations, we have reached agreement with the Union on revisions of 1.4 (a), 1.4 (b), 2.1 and 2.2. Our Foremen have copies of these agreed revisions if you want to see them.

*General Counsel's Exhibit No. 27*

We still are negotiating with the Union with respect to the balance of the provisions. As other items of major importance are agreed to, I will keep you informed.

Sincerely,

Harry E. Blythe—President

**GENERAL COUNSEL'S EXHIBIT No. 28**

March 11, 1953

To You As An Employee Of The Wooster Division:

Since my last letter to you, we have continued negotiations with the Union Committee. I know you will be relieved to hear that we are well on our way to cleaning up the seniority question.

This afternoon, we gave the Union Committee our complete proposal on wages and fringe benefits. A copy of our proposal is attached so that you can look it over.

• This is it! Please read it carefully. In many negotiations, certain things are held back, among them a few cents to offer to keep from a strike or to settle a strike after long periods of no work. I want to make it clear that we have not held anything back and we have nothing more to offer. It is my opinion you would rather have the whole picture put before you in that way.

Here are some of the things you will find in our proposal:

- 1—Wage Increase of 15c per hour for you. I understand this is the highest increase ever given out at one time in the Wooster area.
- 2—Guarantee that your liberal health and welfare program of life insurance, disability benefits and suff-

*General Counsel's Exhibit No. 28*

gical and hospital benefits, for you and your dependents, will continue. How much would you have to pay an insurance company if you tried to provide \$2000 of life insurance and all of these other benefits?

3—Overtime Premium benefits, including time and one-half for Saturday work and double time for Sunday and Holiday work.

4—Increase of Shift Premium from 5c and 7c to 6c and 9c.

5—Increase of Report Pay from 3 hours to 4 hours.

6—Holiday Pay for 6 Holidays not worked. This is worth approximately 4c per hour to you.

7—Vacation Pay based on your length of service. A week of vacation pay is worth approximately 4c per hour to you.

The value to you of this entire package, including the wage increase is considerably more than 25c per hour.

Now ask yourself—Why did I go to work at the Wooster Division?

The answer probably follows.

1—It was a good place to work.

2—The wages were equal or better than what you were getting.

3—The job offered opportunity.

Now consider how much you have bettered your position by the above offer.

Where are you going to get more?

I honestly believe we are offering you the best contract in the area. With the 15c increase for you, the average rate of the Wooster Division will be the highest in the area.

*General Counsel's Exhibit No. 28*

I sincerely hope you will study the proposal, weigh the advantages for you, and accept it as a fair solution to our first contract negotiations.

Sincerely,

Wooster Division,  
Borg-Warner Corporation,  
(s) Harry,  
Harry E. Blythe,  
President & General Manager.

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**GENERAL COUNSEL'S EXHIBIT No. 29**

\* \* \* \* \*

For example, why should the Union deprive you and your local of the right to sign your own agreement in your own name, after they promised you that you would run your own show?

Why should the Union object to setting up mechanics for peaceful means of settling disputes by:

\* \* \* \* \*

3—Giving you a chance to vote in secret before a strike takes place;

\* \* \* \* \*



**GENERAL COUNSEL'S EXHIBIT No. 31**

April 1, 1953

To You As An Employee Of Wooster Division:

The Union broke off negotiations again yesterday afternoon for the fourth time. We have no idea when another meeting will be held.

When we started negotiations eight weeks ago, there were 6 people representing the Union: the five elected members of the local committee, and one International representative from Cleveland.

Yesterday, in addition to the local committee, there were 6 International representatives, 4 from Detroit and 2 from Cleveland. The International representatives did all the talking. The local committee, of course, didn't get much chance to say anything.

Why does Wooster get all this attention from the International? Here is what seemed to be the most important to them yesterday:

1. That International Union policy would not permit a contract to be made only with the local Union.
2. That International Union policy is opposed to a secret strike ballot on Company premises in which all employees can vote.
3. That you must join the Union and pay dues or lose your job.
4. That Union representatives be paid by the Company for time spent in investigating or processing grievances.
5. That our wage rates be equal to rates in this area. (We know from complete surveys of the Industries in the area that Wooster Division averages are higher than the area). It is only natural that

*General Counsel's Exhibit No. 31*

we should wonder how much outsiders from Detroit know about Wooster area rates.

6. That we are somehow "fighting the International Union". (We have fully recognized and dealt with every International representative who has come in with the committee, including the 6 who appeared yesterday. I suppose they mean we are "fighting the International" because we have disagreed with International policies which we think are not fair to you.)

The Union said our proposals were ridiculous or fantastic or something like that. We are willing to let you decide for yourself. I am enclosing the complete contract which we gave the Union yesterday and which they refuse to sign.

Compare it with our first proposal to the Union which I sent you early in February. Look at the progress we made until we hit these professional union issues recently.

See if you don't agree with me that it is a fair basis on which to settle our first labor contract. Let the committee know how you feel.

Sincerely,

Wooster Division,  
Borg-Warner Corporation,  
(s) Harry E. Blythe,  
President & General Manager.

P.S.—Many of your fellow employees are earning their pay checks regularly, and making pumps every day. Why not join them on the job tomorrow?

**GENERAL COUNSEL'S EXHIBIT No. 32**

April 2, 1953

**To You As An Employee Of The Wooster Division:**

It has been brought to my attention that a great many employees wish to return to work but transportation is a problem.

Commencing Monday morning, April 6, we will have a bus in front of the Court House at 6:30 A.M. This bus will leave the Court House at 6:45 A.M.

The seventy-five (75) employees now working have exercised their right to work and are now receiving the 15 cent wage increase plus the other benefits.

One thing that you as an American citizen should remember, you do have the right to work without intimidation or coercion.

We know that you, as an individual, want to work and we want to see that you have this opportunity, so why not come out Monday morning and board the bus!

If you have any questions concerning transportation or anything else, feel free to contact me.

Sincerely,

(s) J. H. Graham

**GENERAL COUNSEL'S EXHIBIT No. 33**

April 15, 1953

Mr. Wayne Hunter  
204 S. Main Street  
Creston, Ohio

Dear Wayne:

No doubt, you have heard the radio announcement and have seen the advertisement in the paper saying that your job is open to you at the Wooster Division until Monday, April 20, 1953.

As you no doubt know, over half of your fellow employees are back on the job. We are interviewing new people all day long and fifteen new employees are now on the job. More are being added daily.

Setting a deadline for your return is a necessary move in order that we know who is returning and who is not.

We have a job to do for the Air Force and a lot of valuable time has already been lost.

I sincerely hope you will return by Monday, April 20. You may be sure you will be most welcome. If you do not return, I wish you the best of success in your new job whatever or wherever it may be.

Sincerely,

Wooster Division,  
Borg-Warner Corporation,  
(s) Harry,  
Harry E. Blythe,  
President & General Manager.

**GENERAL COUNSEL'S EXHIBIT No. 34**

**WOOSTER DIVISION**  
**Borg-Warner Corporation**  
**P. O. Box 394**  
**Wooster, Ohio**

April 22, 1953

**To Those who Chose to Give up their Jobs at Wooster Division:**

Since I last wrote you, I have been hoping to be able to greet you on the job in the shop as I make my daily rounds, but I have been disappointed. When you did not report for work on April 20, it became apparent that you had decided to give up your job here.

I have tried to keep you fully informed on all developments as they arose so you would have all the necessary information at the time you made your decision. And, although well over half of your fellow employees have reached a decision different from yours, that is to return to work, I do not question your right to decide the way you did.

While we might not agree on the decision you made, I know we can both agree that one of the wonderful things about this country we live in is that each individual has the right to make his own decision on such matters, without being ordered around by any Dictator.

Probably the most important issue here at the Wooster Division is to keep you in a position to make your own decisions regarding your job instead of having someone from Detroit, Cleveland, or elsewhere, make these all important decisions for you.

I am sorry that you have chosen to forego the opportunities that existed for you at Wooster Division. I will not bother you any longer with letters, newspaper advertise-



*General Counsel's Exhibit No. 34*

ments or radio announcements. I guess I have already said everything that needs to be said on the subject.

Wherever you are or wherever you go, I want you to know you have my best wishes always.

Sincerely,

Wooster Division,  
Borg-Warner Corporation,  
(s) Harry,  
Harry E. Blythe,  
President & General Manager.

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**GENERAL COUNSEL'S EXHIBIT No. 61**

**CONSTITUTION**

**of the**

**INTERNATIONAL UNION**

**United Automobile, Aircraft**

**and**

**Agricultural Implement Workers**

**of America,**

**(UAW-CIO)**

**(Emblem)**

**Adopted at**

**Cleveland, Ohio**

**April, 1951**

• • • • •

*General Counsel's Exhibit No. 61*

## ARTICLE 1

## Name

The Organization shall be known as the "International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO)," hereinafter referred to as the International Union.

## ARTICLE 2

## Objects

• • • • •

Section 5. To work as an autonomous International Union affiliated with the Congress of Industrial Organizations together with other International Unions, for the solidification of the entire Labor Movement.

• • • • •

## ARTICLE 6

## Membership

Section 1. The International Union shall be composed of workers eligible for membership in the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO).

Section 2. Any person eligible to become a member of the International Union who is not affiliated with any organization whose principles and philosophy are contrary to those of this International Union as outlined in the Preamble of this Constitution, may apply for membership to the Local Union having jurisdiction over the plant in which he is employed. The applicant must, at the time of application, be an actual worker in and around the plant. All applicants for membership in any Local Union of the International Union shall fill out an official application provided by the International Union, answering all ques-

*General Counsel's Exhibit No. 61*

tions contained in such application, and sign a promise to abide by all laws, rules and regulations and the Constitution of the International Union. All applications thus received shall be referred to the Local Union for consideration, and shall be acted upon as soon as possible, but not later than sixty (60) days from the date the application is received by the Financial Secretary of the Local Union.

Section 3. Upon acceptance of the application, membership shall date from the first day of the month for which dues are paid.

. . . . .

Section 6. The original application signed by each member shall be retained by the Local Union for its record and official receipt shall be given to each new member for all moneys paid. All receipts shall be made out in duplicate, the original to be given to the member, the duplicate to be retained by the Local Union and made available to the International Union upon request. These duplicate receipts may be destroyed after a Local Union audit upon written approval of the International Secretary-Treasurer.

Section 7. No new member will be recorded at the International office nor will initiation fee or per capita tax be accepted for new members until a monthly report is received from the Financial Secretary of the Local Union.

Section 8. Any Local Union or International Union Trial Committee expelling any member for cause shall notify the International Secretary-Treasurer and the latter shall notify all Local Unions of this fact forthwith. A person who has been suspended or expelled by any Local Union or International Union Trial Committee shall not be eligible for membership in any other Local Union until all claims or charges against such person have been satisfactorily settled with the Local Union or International Union.

*General Counsel's Exhibit No. 61*

Trial Committee suspending or expelling and written notice to this effect furnished the Local Union to which such person seeks admission.

Section 9. No member shall be allowed to hold membership in more than one Local Union of the International Union at the same time, except by permission of the International Executive Board. No member of the Union who is fully employed in one plant under the jurisdiction of the UAW, shall accept work in any other plant under the jurisdiction of the UAW. Any member violating this section may be subjected to charges of conduct unbecoming a union member.

The above shall not apply in the case of members of a Local Union or unit of an Amalgamated Local Union who are conducting an authorized strike and have received written approval from the Local Union officers to obtain employment elsewhere.

. . . . .

Section 12. Any member in good standing who shall have become totally incapacitated by accident or illness may, at the discretion of his Local Union, be granted a gratuitous membership, continuing during incapacity. Appropriate cards denoting such membership shall be prepared by the International Union and furnished to Local Unions upon request, and at cost.

Section 13. All members of the Local Union are also members of this International Union and subject to the orders, rulings and decisions of this International Union and the properly constituted authorities of the same.

. . . . .

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## ARTICLE 7

## Powers of Administration

The International Union shall be governed by its membership in the following manner:

- (a) The highest tribunal shall be the International Convention composed of delegates democratically elected by the membership of Local Unions.

\* \* \* \* \*

Section 13. International Officers and International Representatives of the International Union shall have a voice but no vote in the Convention of the International Union unless they are duly accredited delegates from Local Unions. Any member who is eligible may be elected to office whether or not he is a delegate to the International Convention.

\* \* \* \* \*

Section 23. Delegates to the International Convention shall be elected by secret ballot of the Local Union of which they are members and in no case shall be appointed. Whenever there are unopposed candidates for delegate to the International Convention such candidates shall be considered elected without the necessity of an election.

\* \* \* \* \*

## ARTICLE 19

## Contracts and Negotiations

Section 1. It shall be the established policy of the International Union to recognize the spirit, the intent and terms of all contractual relations developed and existing between Local Unions and employers, concluded out of conferences between the Local Unions and the employers, as binding upon them. Each Local Union shall be required to carry out the provisions of its contracts. No officer,



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member, representative or agent of the International Union or of any Local Union or of any subordinate body of the International Union shall have the power or authority to counsel, cause, initiate, participate in or ratify any action which constitutes a breach of any contract entered into by a Local Union or by the International Union or a subordinate body thereof. Whenever a Local Union or a manufacturing unit of an Amalgamated Local Union becomes a party to an agreement on wages, hours or working conditions, it shall cause such agreement to be reduced to writing and properly signed by the authorized representatives of all the parties to the agreement.

Section 2. When a grievance exists between a Local Union and management and negotiations are in progress, and an International Union officer or representative is participating by request of the Local Union involved, a committee selected by the Local Union shall participate in all conferences and negotiations. Copies of all contracts shall be filed with the International Secretary-Treasurer.

Section 3. No Local Union Officer, International Officer or International Representative shall have the authority to negotiate the terms of a contract or any supplement thereof with any employer without first obtaining the approval of the Local Union. After negotiations have been concluded with the employer, the proposed contract or supplement shall be submitted to the vote of the Local Union membership or Manufacturing Unit membership in the case of an Amalgamated Local Union at a meeting called especially for such purpose; should the proposed contract or supplement be approved by a majority vote of the Local Union or unit members present at the meeting, it shall be referred to the Regional Director for his recommendation to the International Executive Board for its approval or rejection. In case the regional Board Member recommends

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approval, the contract becomes operative until the final action is taken by the International Executive Board.

Before contract or supplement demands affecting skilled workers are submitted to the employer they shall be submitted to the Skilled Trades Department in order to effectuate an industry-wide standardization of agreements on wages, hours, apprenticeship programs, journeyman standards and working conditions.

Section 4. National agreements and supplements thereof shall be ratified by the Local Unions involved.

Section 5: The general meeting of the Local Union members of a manufacturing establishment under the jurisdiction of an Amalgamated Local Union shall be the highest authority for handling problems within the manufacturing establishment, in conformity with the By-Laws of the Local Union and this International Constitution.

Section 6. The International Executive Board shall protect all Local Unions who have succeeded in establishing higher wages and favorable conditions and have superior agreements so that no infringement by Local Unions with inferior agreements in plants doing similar work may be committed against the Local Union with advanced agreements.

Section 7. Each Local Union or unit of an Amalgamated Local Union shall be required to maintain a complete and up-to-date schedule of job classifications and wage rates; a copy of which must be attached to each contract submitted to the International Union.

## ARTICLE 20

### National and Corporation Bargaining Councils

Section 1. In cases where there are a number of Local Unions involved in negotiations and bargaining with a major Corporation or an association of Corporations the

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International Executive Board shall set up an Intra-Corporation Council. Such Local Unions so involved shall be members and shall participate through duly-elected delegates. When the large Corporation or National Association has widely scattered branches the Intra-Corporation Council shall set up Sub-Corporation Councils.

Section 2. The International Executive Board shall determine the district in which Sub-Corporation Councils shall be established. The Intra-Corporation Council shall be composed of delegates from the Sub-Corporation Council.

Section 3. Directors to work with such Councils shall be appointed by the President subject to the approval of the International Executive Board.

Section 4. Voting at National Intra-Corporation Council meetings shall be based on per capita tax paid to the International Union by the various Local Unions participating.

Section 5. The purpose of the Intra-Corporation Council shall be to coordinate the demands of the separate members and to formulate policies in dealing with their common employer. The Intra-Corporation Council shall be convened not later than thirty (30) days prior to the opening of negotiations for a new National Corporation agreement to formulate new contract demands. The Council shall deal only with matters pertaining to problems arising in their immediate corporations. It shall be understood that such Intra-Corporation Council is not a legislative body of the International Union and shall not deal with policies of the International Union other than those concerning their own immediate corporation problems.

*General Counsel's Exhibit No. 61***ARTICLE 21****National and Regional Wage-Hour Conferences**

Section 1. Upon the written request of at least two (2) Local Unions to the Competitive Shop Department, National and Regional Wage-Hour Conferences may be called for the purposes of facilitating a discussion of problems related to wages, hours, production standards and other conditions of work within a competitive or allied group; and to assist in the establishment of uniform contractual provisions within the industry.

Section 2. Activities of both National and Regional Wage-Hour Conferences shall be coordinated through the offices of the Competitive Shop Department in cooperation with the Research Department of the International Union.

• • • • •

**ARTICLE 23****Competitive Shop Department**

Section 1. The International Executive Board shall create a Competitive Shop Department for the International Union.

• • • • •

**ARTICLE 24****Research Department**

Section 1. The International Executive Board shall create a Research Department for the International Union.

• • • • •

**ARTICLE 25****Fair Practices and Anti-Discrimination Department**

Section 1. There is hereby created a department to be known as the Fair Practices and Anti-Discrimination Department of the International Union.

• • • • •

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## ARTICLE 26

Educational Department  
\* \* \* \* \*

Section 2. The International President shall appoint an Educational Director over the Educational Department, and such appointment shall be subject to approval of the International Executive Board.

\* \* \* \* \*

## ARTICLE 31

## District Councils

Section 1. When a majority of Local Unions of this International Union representing a majority of the membership within their geographical district, request the establishment of a District Council, such Local Union representatives shall be assembled by the Regional Directors of that area for the formation of such a Council.

\* \* \* \* \*

## ARTICLE 39

## Duties of Local Union Members.

Section 1. It shall be the duty of each member to conscientiously seek to understand and exemplify by practice the intent and purpose of his obligation as a member of this International Union.

\* \* \* \* \*

## ARTICLE 49

## Strikes

Section 1. Whenever any difficulty arises within the jurisdiction of any Local Union within the shop involved, between its members and any employer or employers, growing out of reduction in wages, lengthening of hours of labor, or other grievances incident to the conditions of



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employment, or whenever any Local Union desires to secure for its members an increase in wages, a shorter work day or other changes in the conditions of employment, the Local Union involved shall call a meeting of all members to decide whether the proposed changes shall be accepted or rejected. The majority vote of those present and voting on the question shall decide. If, as a result of this decision, a strike vote is decided upon, the Local Union Executive Board shall notify all members, and it shall require a two-thirds vote by secret ballot of those voting to declare a strike. Only members in good standing shall be entitled to vote on the question of declaring a strike.

Section 2. . If the Local Union involved is unable to reach an agreement with the employer without strike action, the Recording Secretary of the Local Union shall prepare a full statement of the matters in controversy and forward the same to the Regional Director and International President. The Regional Director or his assigned representative in conjunction with the Local Union Committee shall attempt to effect a settlement. Upon failure to effect a settlement he shall send the International President his recommendation of approval or disapproval of a strike. Upon receipt of the statement of matters in controversy from the Regional Director, the International President shall prepare and forward a copy thereof to each member of the International Executive Board together with a request for their vote upon the question of approving a strike of those involved to enforce their decision in relation thereto. Upon receipt of the vote of the members of the International Executive Board, the International President shall forthwith notify in writing the Regional Director and the Local Union of the decision of the International Executive Board.

. . . . .

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Section 5. Before a strike shall be called off, a special meeting of the Local Union shall be called for that purpose, and it shall require a majority vote by secret ballot of all members present to decide the question either way. Wherever the International Executive Board decides that it is unwise to longer continue an existing strike, it will order all members of Local Unions who have ceased work in connection therewith to resume work and thereupon and thereafter all assistance from the International Union shall cease.

. . . . .

**GENERAL COUNSEL'S EXHIBIT No. 62****CONSTITUTION**

of the

**INTERNATIONAL UNION****United Automobile, Aircraft**

and

**Agricultural Implement Workers**

of America,

**(UAW-CIO)**

(Emblem)

Adopted at

Atlantic City, New Jersey

March, 1953

**ARTICLE 49****Strikes**

Section 1. Whenever any difficulty arises within the jurisdiction of any Local Union within the shop involved, between its members and any employer or employers, growing out of reduction in wages, lengthening of hours of labor, or other grievances incident to the conditions of employ-

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ment, or whenever any Local Union desires to secure for its members an increase in wages, a shorter work day or other changes in the conditions of employment, the Local Union involved shall call a meeting of all members to decide whether the proposed changes shall be accepted or rejected. The majority vote of those present and voting on the question shall decide. If, as a result of this decision, a strike vote is decided upon, the Local Union Executive Board shall notify all members, and it shall require a two-thirds vote by secret ballot of those voting to declare a strike. Only members in good standing shall be entitled to vote on the question of declaring a strike.

Section 2. If the Local Union involved is unable to reach an agreement with the employer without strike action, the Recording Secretary of the Local Union shall prepare a full statement of the matters in controversy and forward the same to the Regional Director and International President. The Regional Director or his assigned representative in conjunction with the Local Union Committee shall attempt to effect a settlement. Upon failure to effect a settlement he shall send the International President his recommendation of approval or disapproval of a strike. Upon receipt of the statement of matters in controversy from the Regional Director, the International President shall prepare and forward a copy thereof to each member of the International Executive Board together with a request for their vote upon the question of approving a strike of those involved to enforce their decision in relation thereto. Upon receipt of the vote or the members of the International Executive Board, the International President shall forthwith notify in writing the Regional Director and the Local Union of the decision of the International Executive Board.

Section 3. In case of an emergency where delay would seriously jeopardize the welfare of those involved, the In-

*General Counsel's Exhibit No. 62*

ternational President, after consultation with the other International Officers, may approve a strike pending the submission to, and securing the approval of, the International Executive Board, providing such authorization shall be in writing.

Section 4. Neither the International Union nor any Local Union, nor any subordinate body of the International Union, nor any officer, member, representative or agent of the International Union, Local Union or subordinate body shall have the power or authority to instigate, call, lead or engage in any strike or work stoppage, or to induce or encourage employees of any employer to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, except as authorized by the International Executive Board or the International President in conformity with the provisions of this Constitution. Such power and authority resides exclusively in the International Executive Board and the International President, and may be exercised only by collective action of the International Executive Board as provided in Section 2 of this Article or by emergency action of the International President as provided in Section 3 of this Article.

Section 5. Before a strike shall be called off, a special meeting of the Local Union shall be called for that purpose, and it shall require a majority vote by secret ballot of all members present to decide the question either way. Wherever the International Executive Board decides that it is unwise to longer continue an existing strike, it will order all members of Local Unions who have ceased work in connection therewith to resume work and thereupon and thereafter all assistance from the International Union shall cease.

. . . . .

**GENERAL COUNSEL'S EXHIBIT No. 63**

**LET'S COMPARE THE RECORD AND YOU DECIDE!**

**Parties to the Agreement**

**Company's last offer:**

1. That the Agreement be between the Company and Local Union 1239, UAW-CIO.

**PESCO Agreement:**

1. That the Agreement be between the Company and the International Union and its Local 363, UAW-CIO.

**Union Security**

**Company's last offer:**

1. Check-off of dues and Initiation Fees which may be revoked upon written notice at any time.

**PESCO Agreement:**

1. All member who are now members shall remain members.
2. All new employees shall become members on and after 3 days of employment.
3. Voluntary check-off of dues not revokable until after one (1) year.

**Settlement of Disputes**

**Company's last offer:**

Executive Board, the International President shall forth-to vote on the acceptance of the Company's last offer, whether members of the Union, or not members of the Union. The election to be conducted on Company property, by secret ballot.

**PESCO Agreement:**

1. The Union shall determine the time and place when a secret ballot will be conducted. (Such votes shall conform with the International Union, UAW-CIO.



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Constitution.) Only members in good standing shall be allowed to vote on the company's last offer:

Note: The Union has asked that all employees become members so all can vote: The Company has refused.

Union Representation on Overtime

Company's last offer:

1. Company has refused to allow the President or Chief Steward to be present for representation on overtime hours.

PESCO Agreement:

1. If 50 employees are working on overtime, one shall be the Chief Shop Steward. If 100 employees are working, two of the employees working shall be the President and the Chief Shop Steward.

Grievance Procedure

1. Grievances must be appealed within 14 days both from the time such grievance takes place and appealed from the first step to the second step, and further from step to step within 14 days.

PESCO Agreement:

1. No time limitations.

Company's last offer:

1. Proposed a meeting with top committee every two weeks, and emergency meetings at only the will of the company.

PESCO Agreement:

1. Meetings are held once a week and meetings are held more often if necessary.

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**Company's last offer:**

1. Company agrees to pay for lost time for investigating and handling grievances, only when called by the Foreman.

**PESCO Agreement:**

1. Company agrees to pay for all lost time whether or not called by the Foreman.

**Leaves of Absence**

**Company's last offer:**

1. Company refuses to allow a leave of absence for an employee who has a member of his family ill, necessitating that such member of his family be taken to another climate.

**PESCO Agreement:**

1. Provides that an employee shall be given a leave of absence if a member of his needs to be taken to another climate.

**Transfer of Employees**

**Company's last offer:**

1. The company shall have the right to transfer an employee at any time from one classification to another as they see fit.

**PESCO Agreement:**

1. The company shall not transfer an employee from one classification to another except with the employee's consent.

**Company's last offer:**

1. An employee transferred or promoted to a higher paid job shall not be paid the higher rate until after 14 days.

*General Counsel's Exhibit No. 63***PESCO Agreement:**

1. An employee who is transferred or promoted to a higher paid job shall be paid the higher rate after five days.

**Waiver Clause****Company's last offer:**

1. The company insists on this clause which will prevent the local union from negotiating on any matter not covered in the agreement until the next contract.

**PESCO Agreement:**

1. This agreement does not have such waiver clause. The Union has the right to negotiate on any matter not covered by the agreement.

**Probationary Period****Company's last offer:**

1. A new employee can be discharged for any reason for a period of 60 days.

**PESCO Agreement:**

1. An employee may be discharged or transferred within a period of 30 days. However, such discharges for discrimination will be subject to the grievance procedure.

**Seniority****Company's last offer:**

1. Greatly restricted plant-wide seniority.

**PESCO Agreement:**

1. Unrestricted plant-wide seniority.

**Wash-Up Period****Company's last offer:**

1. 5 minutes for putting tools away and cleaning machines. NO WASH-UP PERIOD.

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**PESCO Agreement:**

1. 5 minutes for putting tools away and cleaning machines and 10 minutes at the end of each shift for wash-up time.

**Overtime Pay**

**Company's last offer:**

1. Time and one half for over 8 hours and 40 hours.
2. Time and one half for Saturday providing the employee is not off during the week for personal reasons.
3. Double time for Sundays and holidays.

**PESCO Agreement:**

1. One and one half time for over 8 hours and over 40 hours.
2. One and one half time before and after the regular starting and quitting time.
3. Time and one half for Saturday (unqualified).
4. Double time after 10 hours during the work week and after 8 hours on Saturday and for Sundays and holidays.

**Continuous Operations and Paid Lunch Periods**

**Company's last offer:**

1. 15 minute paid lunch period (no cafeteria).

**PESCO Agreement:**

1. 30 minute paid lunch period (in-plant cafeteria).

**Night Shift Premium**

**Company's last offer:**

1. 2nd shift 6c per hour; 3rd shift 9c per hour.

**PESCO Agreement:**

1. 2nd shift 10c per hour; 3rd shift 12c per hour.

**Note:** If a night shift employee works over ten hours the

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night shift premium shall be increased an additional 3c per hour.

**Pension**

Company's last offer:

1. No pension proposal.

PESCO Agreement:

1. Full pension benefits for employees at retirement.

**Insurance**

Company's last offer:

1. Life insurance—\$2,000.
2. Sick and Accident—\$30.00 per week.

PESCO Agreement:

1. Life insurance \$2,500.
2. Sick and Accident \$33.00 per week.

**Learner's Starting Rate**

Employees Without Previous Experience:

Company's last offer:

1. Female starting rate—95c per hour.
2. Male starting rate —\$1.25 per hour.

Note: There is no guarantee that a learner shall receive anything above a starting rate.

PESCO Agreement:

1. Learners shall not start less than 10c below the minimum rate of the job classification for which they are learning, and shall receive 5c at the end of 30 days and another 5c at the end of another 90 days.

Example for Comparison:

For a drill press multiple spindle and single spindle operator.



*General Counsel's Exhibit No. 63***Wooster Division—**

Starting Rate \$1.25 or 95c min. Rate \$1.55

**Pesco Division—**

Starting Rate \$1.72 min. Rate \$1.82

**Vacations****Company's last offer:**

1. 6 months to one year—2 days vacation with pay.
2. 1 year to five years —40 hours vacation with pay.
3. 5 years to 15 years —80 hours vacation pay.
4. Over 15 years —120 hours vacation pay.

**PESCO Agreement:**

1. 6 months to one year—2 days vacation pay.
2. 1 year to two years —40 hours vacation pay.
3. 2 years to 3 years —48 hours vacation pay.
4. 3 years to 4 years —56 hours vacation pay.
5. 4 years to 5 years —64 hours vacation pay.
6. 5 years to 15 years —96 hours vacation pay.
7. 15 years and over —120 hours vacation pay.

**Note:** The Pesco Agreement also provides that an employee whose average hours per week exceeds 40 hours such vacation pay shall be increased to the extent of such average hours over 40 hours per week.

**Wages**

Below is a list of rates in the Company's last offer and also those rates being paid at the Pesco Plant. (These rates are the top rates in both plants.)

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Classification	Company's last Offer	Pesco Rates	Difference
Automatic—multiple spindle . . . . .	1.95	2.28	—33c
borematic . . . . .	1.80	2.11	—31c
Burring—complete . . . . .	1.55	1.79	—24c
bench and machine . . . . .	1.30	1.79	—49c
Drill press—multiple and single . . . . .	1.70	2.01	—31c
Gear Cutting—gear cutter . . . . .	1.80	2.07	—27c
Grinders—centerless . . . . .	1.75	2.08	—33c
—external and internal . . . . .	1.75	2.10	—35c
Lathes . . . . .	1.70	2.08	—38c
Milling . . . . .	1.80	2.06	—26c
Testing—booster or fuel . . . . .	1.70 and 1.75	1.93 and 2.00	—23c —25c
Turret lathe bar . . . . .	1.80	2.11	—31c
—Chuckers . . . . .	1.80	2.13	—33c
Inspection—gauge inspector . . . . .	1.90	2.16	—26c
—process . . . . .	1.70	2.06	—36c
—receiving . . . . .	1.70	1.94	—24c
—shipping . . . . .	1.70	2.02	—32c
—tool . . . . .	1.95	2.22	—27c
Machine repair . . . . .	1.90	2.24	—34c
Maintenance carpenter . . . . .	1.75	2.15	—40c
—electrician . . . . .	1.75	2.17	—42c
—yard man . . . . .	1.55	1.88	—33c
—truck driver . . . . .	1.70	1.93	—23c
Sanitation—janitor and sweeper . . . . .	1.35	1.73	—38c
—Labor . . . . .	1.40	1.73	—33c
Tool room—bench hand . . . . .	2.05	2.38	—33c
—boring mill . . . . .	1.90	2.33	—43c
—drill press . . . . .	1.80	2.24	—44c
—engine lathe . . . . .	1.90	2.24	—34c
—milling machine . . . . .	1.85	2.24	—39c
—precision welder . . . . .	2.00	2.35	—35c

The above will show that there is an average differential of 33c per hour between the Pesco Products Division and the last offer of the company.

## Wage Reopening

Company's last offer:

1. Wages frozen for the duration of the contract.

*General Counsel's Exhibit No. 63***PESCO Agreement:**

1. Wages will be automatically increased in proportion to the rise in the cost of living, at every three month intervals, and an automatic general wage increase of 4c per hour on August 18th, 1953, and each year thereafter an additional 4c per hour automatic general wage increase will be given.

**Retroactive Pay****Company's last offer:**

1. No retroactive pay, the increase as proposed by the company to become effective when ratified by the local union.

**PESCO Agreement:**

1. Contract signed October 25, 1952 provided a retroactive adjustment of 14½c per hour from January 1, 1952 to June 30- 15½c from June 30th, 1952 to August 18th; 21c per hour from August 18th, 1952 to September 1st; 24c after September 1st, 1952.

Note: The 4c annual improvement factor that the PESCO workers will receive on August 18th of this year will put them on an average of 37c per hour above the last proposal offered by the Wooster Division Management.

These are the facts. Read them over and be sure to attend your local union meeting to be held on Sunday, March 15th at 2:30 p.m. at the Wetzel Hall to make your determination.

Respectfully submitted by:

**THE BARGAINING COMMITTEE**  
**Local 1239, UAW-CIO**

March 14th, 1953

**GENERAL COUNSEL'S EXHIBIT No. 66****EMPLOYEES HIRED 3/20/53 TO 8/15/53 INCLUSIVE**

Clock No.	Name	Hiring Date	Classification	Rate	Shift
8305	R. Schrock	4/27/53	L. Chuckers	\$1.25	1
8292	F. Everhart	4/27/53	L. Chuckers	1.55	1
8297	F. W. Metsker	4/27/53	L. Chuckers	1.45	1
8281	A. Carillon	4/27/53	L. Chuckers	1.25	1
8273	C. Minear	4/16/53	L. Chuckers	1.25	1
8279	D. Rastetter	4/20/53	L. Chuckers	1.25	1
8285	N. Swain	4/21/53	L. Chuckers	1.25	1
8282	G. Drushel	4/27/53	L. Chuckers	1.25	1
8286	H. Humrichouser	5/1/53	L. Bar Mach.	1.35	1
8306	P. Bowman	4/29/53	L. Bar Mach.	1.25	1
8277	D. Baker	4/20/53	L. Bar Mach.	1.25	1
8291	J. Polin	4/21/53	L. Grinding	1.25	1
8274	A. Gilt	4/21/53	L. Grinding	1.25	1
8293	C. Bertschy	4/23/53	L. Grinding	1.25	1
8275	F. Miller	4/16/53	L. Grinding	1.35	1
8280	F. E. Metsker	4/20/53	L. Grinding	1.25	1
†8263	W. Moore	3/30/53	L. Grinding	1.25	1
*8310	R. Manges	6/2/53	L. Gear Cut.	1.25	1
8303	F. Sprinkle	4/27/53	L. Milling	1.25	1
8267	B. Patterson	4/9/53	L. Milling	1.25	1
8322	M. Schaller	8/13/53	B Milling	1.65	2
8287	P. Polen	4/27/53	L. Burring	1.25	1
8294	G. Campbell	4/23/53	L. Burring	1.25	1
8288	W. Owens	4/21/53	L. Burring	1.25	1
8313	W. Benson	8/4/53	L. Burring	1.25	2
8318	F. Haston	8/4/53	L. Burring	1.25	2
8289	C. Weekley	4/22/53	A Dr. Pr.	1.70	1
8290	S. Fraelich	4/21/53	L. Dr. Pr.	1.25	1
8268	C. Mullett	4/13/53	L. Dr. Pr.	1.25	1
8269	J. Mackey	4/13/53	L. Dr. Pr.	1.40	1
8270	W. Strouse	4/13/53	L. Dr. Pr.	1.25	1
8271	P. Kline	4/13/53	L. Dr. Pr.	1.25	1
8272	D. Morris	4/13/53	L. Dr. Pr.	1.25	1
8276	R. McCune	4/20/53	L. Dr. Pr.	1.25	1

\*Hired 4/14/53. Quit job and had hernia operation before starting.

†Hired to come in on 3/20/53. Could not get in and reported 3/30/53.

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Clock No.	Name	Hiring Date	Classification	Rate	Shift
8278	D. Vogt	4/16/53	L. Dr. Pr.	1.25	1
8266	H. Bennett	4/9/53	L. Dr. Pr.	1.25	1
8314	H. Keppeler	8/4/53	L. Dr. Pr.	1.25	2
8317	C. Johnson	8/4/53	L. Dr. Pr.	1.25	2
8319	P. Phillips	8/10/53	L. Dr. Pr.	1.25	2
8320	N. Byrd	8/11/53	L. Dr. Pr.	1.25	2
8325	V. Fowler	8/11/53	L. Dr. Pr.	1.25	2
8326	C. Braden	8/11/53	L. Dr. Pr.	1.25	2
8331	B. Johnson	8/13/53	L. Dr. Pr.	1.25	2
8311	D. Bickel	4/30/53	L. Assem.	1.25	1
8324	C. Shinabarker	8/10/53	L. Assem.	1.25	2
8298	F. Middleton	4/24/53	L. Plate	1.25	1
8296	A. Humphrey	4/27/53	L. Shipping	1.25	1
8284	D. Merrilat	4/23/53	L. Shipping	1.35	1
8316	W. Morrison	8/4/53	L. Shipping	1.25	2
8308	A. Strothers	4/27/53	L. Receiving	1.25	1
8307	R. Stout	4/27/53	L. Tool Crib	1.25	1
8323	O. Dodez	8/10/53	L. Test	1.25	2
8299	D. Lyons	4/27/53	L. Inspection	1.25	1
8304	A. Mancini	4/24/53	L. Inspection	1.25	1
8283	E. McDaniel	4/29/53	A. Inspection	1.70	1
8302	C. Hendershot	5/18/53	L. Inspection	1.25	1
8309	H. McClintock	4/30/53	A. Electrician	1.75	1
8295	H. Mitten	4/24/53	A. Electrician	1.65	1
8300	W. Tope	4/23/53	A. Electrician	1.75	1
8301	R. Lepley	4/27/53	A. Sweeper	1.35	1
8312	A. Fortune	6/24/53	A. Sweeper	1.25	1
9021	F. Huff	4/20/53	L. Burring	.95	1
9022	P. Ray	4/21/53	L. Burring	.95	1
9023	B. Matheny	4/21/53	L. Burring	.95	1
9025	E. Snodgrass	4/23/53	L. Burring	.95	1
9020	L. Gantz	4/9/53	L. Burring	.95	1
9026	N. Newkirk	4/27/53	L. Assem.	.95	1
9027	H. Kerr	4/27/53	L. Assem.	.95	1
9028	A. Sigrist	4/27/53	L. Assem.	.95	1
9024	G. Wells	4/27/53	L. Inspection	1.10	1

†Hired 4/11/53. Physical exam. 4/11/53. Returned to W. Va. to work out notice and make arrangements to move to Wooster.



**RESPONDENT'S EXHIBIT No. 1**

**INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AIRCRAFT, AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA**

**(UAW-CIO)**

**(Emblem)**

**(Letterhead omitted)**

**January 14, 1953**

**Mr. Harry Blythe, President  
Wooster Division  
Borg-Warner Corporation  
R D No. 6  
Wooster, Ohio**

**Dear Sir:**

It has been called to the attention of Local 1239 that on January 13, 1953, an employee, one Ethel Morer, was removed from the payroll of the Wooster Division of the Borg-Warner Corporation of which you, as a member of Management of this concern must assume responsibility.

As you are no doubt aware, this local Union, as a division of the UAW-CIO was certified as the sole bargaining agent for the employees of your concern. This certification by the National Labor Relations Board was issued on December 18, 1952, and as the representative of this employee along with the other employees of your Company, we desire a meeting with you or your representative at your earliest convenience for the purpose of reaching an amicable settlement on what we consider an unwarranted release of this employee.

Trusting that in the interest of establishing the proper Labor-Management relationship, you will notify us promptly of the time and place at which such a meeting

# **TO THOSE EMPLOYEES OF WOOSTER DIVISION WHO HAVE NOT RETURNED TO WORK**

**Here Are Some Of The Things That You, Too, Can Get  
By Returning To Your Work Tomorrow Morning.**

- 1--WAGE INCREASE of 15c per hour for you. We understand this is the highest increase ever given out at one time in the Wooster area. This 15c increase amounts to \$35.41 MORE PER MONTH to both male and female employees.
- 2--Guarantee that your LIBERAL HEALTH AND WELFARE PROGRAM of Life insurance, disability benefits and medical and hospital benefits for you and your dependents, will continue. How much would YOU have to pay an insurance company if you tried to provide \$2,000 of life insurance and all of these other benefits?
- 3--OVERTIME PREMIUM BENEFITS, including time and one-half for Saturday work and double time for Sunday and Holiday work as such.
- 4--INCREASE OF SHIFT PREMIUM from 5c and 7c to 6c and 9c.
- 5--INCREASE OF REPORT PAY from 3 hours to 4 hours.
- 6--HOLIDAY PAY for 6 holidays not worked. This is worth approximately 4c per hour to you.
- 7--VACATION PAY based on your length of service. A week of vacation pay is worth approximately 4c per hour to you.
- 8--INCREASED ACCELERATION of periodic increases for learners.

**The Value To You of This Entire Package, Including The Wage Increase  
Is Considerably More Than 25c Per Hour.**

**One Third of Your Fellow Employees Are Back At Work Now.  
They Are Receiving These Benefits Now.**

**You, Too, Can Receive Them As Soon As You Return To Work.  
Join Your Fellow Employees By Returning to Work Tomorrow Morning.**

## **WOOSTER DIVISION**

**Borg-Warner**



# A PERSONAL MESSAGE TO THE WIVES OF WOOSTER DIVISION EMPLOYEES:

A month ago at our Open House I had the pleasure of meeting nearly all of you personally. It was a pleasure to have you as our guests and to have the opportunity of showing you the place your husband worked. Many of you expressed your appreciation of the good housekeeping and pleasant atmosphere as well as well as the opportunity for your husbands with Wooster Division.

Since your visit the UAW-CIO has called your husband out on strike. I know how serious that can be to you when you have to figure out a way to make ends meet without a pay check coming in regularly, particularly when there are children to be fed and clothed.

That was one of the main reasons that I reached the decision, as soon as the strike was called, to put the 15c per hour wage increase and other benefits into immediate effect for all those who came in to work. I did not feel it would be fair to ask you to wait for the UAW-CIO to reach agreement on all of the items in dispute.

Many of you are fortunate because you do not have the same problem of making ends meet. Your husbands have exercised their right to work and are now getting the \$35.41 monthly added pay, and the other benefits too, offered in the company's contract.

To those of you whose husbands have not yet returned to work, I not only offer my sympathy, but extend an invitation. I invite you to urge your husband to join his fellow-workers who are earning regular pay checks.

Then you too can buy your groceries, keep up payments on your home, your car, your television, or whatever else it might be that requires money. No one likes to go into debt. It is not at all necessary in your case.

When I met you I had the feeling that you were convinced your husband had a good job, with an excellent future. The job is still here. The future is still here.

I believe that the husbands of most of you really want to return to work, and make the most of their job and build for the future. It may be that all your husband needs is encouragement. Why not urge him to join his fellow workers in earning a regular, increased pay check.

Sincerely,

(S) Harry E. Blythe

President & General Manager

WOOSTER DIVISION Borg-Warner Corp.

(Advertisement)



# WHY Did The UAW-CIO STRIKE WOOSTER DIVISION?

Here Are The "Unsettled Items" The Reasons The Union Gave For Calling The Strike.

## LOCAL AGREEMENT

The UAW-CIO refuses to permit the Local Union to be the principal party to its own agreement. The UAW-CIO says that it is International Union policy for the International to make all agreements, regardless of what the local employees want.

The UAW-CIO still insists that all employees join the union or lose their jobs. The Company has offered a Checkoff of Union dues for all those who wish.

## WAGES

The UAW-CIO International Representatives from Detroit and Cleveland claim the company's 15c per hour offer and other benefits will not bring wages up to Wooster area rates. We know that the new wage scale will provide the highest average rates in the Wooster area, and we feel those of us in Wooster know more about Wooster rates than anyone from Detroit or Cleveland.

## Requiring Settlement

The UAW-CIO still insists on a provision which would prevent settlement of grievances, so a strike could be called at any time. We have tried to convince them that the best interests of the employees are served by settling all grievances as soon as possible, rather than by striking.

## NEW DEMANDS

The UAW-CIO still refuses to make a firm agreement for the term of the contract, and insists on the right to call employees out on strike at any time the union thinks of some other subject it can demand.

## STRIKE VOTE

The UAW-CIO refuses to permit the local union to agree to a **SECRET STRIKE VOTE** on Company premises before any strike takes place, even though all employees will suffer by a strike.

## STEWARDS' PAY

The UAW-CIO still insists that all Union Stewards be paid by the company for all time they spend "investigating" grievances. The company has agreed to pay them for time spent in meetings called by the company.

## INTERNATIONAL UNION

The UAW-CIO International Representatives are asking the local Wooster employees to stay on strike because of a fight they have with Borg-Warner Corporation of Chicago. We in Wooster have met and negotiated with every International Representative sent to Wooster from Detroit, Cleveland or anywhere else.

## THESE ARE THE MAJOR ITEMS FOR WHICH THE UAW-CIO IS ASKING EMPLOYEES TO LOSE EARNINGS DURING A STRIKE

None of the other items which have not been agreed to could be called "strike" items.

## ONE THIRD OF THE WOOSTER DIVISION EMPLOYEES ALREADY HAVE SHOWN THEY DO NOT FEEL THESE ISSUES ARE WORTH STRIKING FOR.

75 Wooster Division employees already have accepted the Company's offer of 15c per hour wage increases and other benefits, and are working, earning regular pay checks which bring them \$35.42 more per month.

## ARE THESE ITEMS WORTH STRIKING FOR?

All Wooster Division employees are invited to join their fellow employees on the job, so they can benefit immediately from the increased pay and other benefits.

**JOIN YOUR FELLOW EMPLOYEES ON THE JOB TOMORROW**

**WOOSTER DIVISION  
Borg-Warner**



# EMPLOYEES OF WOOSTER DIVISION

## This Is What The UAW-CIO Is Keeping You From Getting:

The UAW-CIO International is keeping you from working NOT because they thought that you were unhappy or dissatisfied with the company offer, but BECAUSE THE UAW-CIO PROFESSIONALS DID NOT GET EVERYTHING THEY WANTED FOR THEMSELVES and for the International.

### HERE IS A LIST OF THE EMPLOYEE BENEFITS BY THE COMPANY:

The numbers after each item refer to the paragraph in the Company offer as presented to the union committee, and as given to all employees. Employees are invited to check and verify each item, so they can see for themselves.

### THE 75 EMPLOYEES NOW WORKING ARE RECEIVING THESE BENEFITS: ECONOMIC

- |                                    |   |   |
|------------------------------------|---|---|
| • 15 Cent Increase (6.1)           | • Overtime Pay (9.1)<br>Time and 1/2 for 8 hours<br>Time and 1/2 for 10 hours<br>Time and 1/2 for Saturdays worked<br>Double time for Sundays worked<br>Double time for Holidays worked | • Guaranteed Insurance Coverage (23.4)  |
| • Shift Premiums 6c and 9c (8.2)   |   | • Reporting Pay . . . 4 Hours (9.4)     |
| • Vacations With Pay (Sec. 12)     |   | • Quick Step-up Of Learners Rates (7.2) |
| • Pay for Unworked Holidays (11.3) |   | • Rate Reviews Up To Maximum (7.3)      |

### NON-ECONOMIC:

#### Protection Against:

- Dismissal from outside personnel
- Dismissal of job by superiors (3.10)
- Dismissal from 7.1 and 7.2
- Lockouts and economic strikes (5.8)
- Arbitrary layoffs (2.1)
- Dismissal from outside security (13.10)
- Shift change changes (8.2)
- Dismissal from 40 hours (8.1)
- Unjustified suspensions at work (5.3)
- Resigning by unqualified people (13.8)
- Removal of plant from Wooster (13.11)
- Permanent transfers without consent (19.3)
- Plant cuts in temporary transfers (19.1)
- Dismissal standards (20.1)
- Dismissal in grievances (19.1)
- Opportunities for Advancement
- Job bidding (11.1)
- Political promotion from within (14.1)

#### Provision for:

- Notice of overtime (10.2)
- Notice of grievance procedure (Art. 13)
- Arbitration (13.10)
- Face policy on standards (20.1)
- Settlement of standards disputes (20.2)
- Retrospectively increased new standards (21.4)
- Security (13.1)
- Layoffs (13.1)
- Recalls (13.14)
- Settlement of Disputes
- Knowledge of issues (3.4, 5.5, 5.6)
- Secret strike ballot (3.4, 5.5, 5.6)

### PRIVILEGES FOR THE UNION:

THE UNION PROFESSIONALS COMPLAIN THEY DID NOT GET ENOUGH PRIVILEGES FOR THEMSELVES. HERE IS A LIST OF THE SPECIAL PRIVILEGES THEY HAVE BEEN OFFERED -- AND WHICH THEY TURNED DOWN AS "NOT ENOUGH".

- |   |   |                                  |
|---|---|----------------------------------|
| Exclusive bargaining rights (1.1)           | President                                 | Notice of                        |
| Checkoff of dues (Art. 3)                   | Vice-President                            | Merit increases (7.5)            |
| Grievance Committee of 5 people             | Recording Sec.                            | Overtime work (10.4)             |
| Chief Shop Steward                          | Financial Sec. and Treas.                 | Termination of employment (13.5) |
| to District Stewards (2.1)                  | Grievance Committee                       | Layoffs in advance (13.11)       |
| Additional Stewards if necessary (2.3)      | Stewards                                  | Job standard changes (20.1)      |
| Admission to Plant                          | Right to leave job on grievances (15.9)   |                                  |
| President and CSS (2.4.a)                   | Pay for joint meetings (15.10.b)          |                                  |
| International Reps. (2.4.b)                 | Regular grievance meetings (15.7.a)       |                                  |
| Representation on overtime                  | Leaves of absence for Union office (16.7) |                                  |
| Stewards (10.5)                             | Union conventions (16.8)                  |                                  |
| President and CSS on Sat. and Sunday (10.7) | Membership on Safety and Health           |                                  |
| Preferential seniority (13.13)              | Committee (18.1)                          |                                  |

With These Things In Mind Answer This Question Honestly For Yourself:  
"WHY SHOULDN'T I BE BACK ON MY JOB?"

Your Job, Which Entitles You To These Benefits Immediately, Is Waiting For You.  
JOIN YOUR FELLOW EMPLOYEES ON THE JOB TODAY.

## Wooster Division

Borg-Warner Corp



# **TO EMPLOYEES OF WOOSTER DIVISION: WHAT IS OPPORTUNITY WORTH TO YOU IN CENTS PER HOUR?**

It probably will be a different amount for each one of you. But you know what it is worth to you.

And you know that you came to Wooster Division because you saw a GREATER OPPORTUNITY at Wooster Division than you saw anyplace else.

If you had experience before you came to Wooster Division, you saw the OPPORTUNITY OF PROMOTION . . . of being in on the ground floor . . . of progressing with a new and growing Company.

## **THAT OPPORTUNITY STILL EXISTS..**

If you did not have experience before you came to Wooster Division, you saw the opportunity of LEARNING A JOB AT THE COMPANY'S EXPENSE. Of qualifying yourself for a better job, either at Wooster Division, or elsewhere.

## **THAT OPPORTUNITY STILL EXISTS..**

How many times in a lifetime does a person have an opportunity that equals the opportunity you have today? Will another one come along in your lifetime? Where can you go to equal this opportunity?

## **You Can Protect Your Opportunity..**

**THE WOOSTER DIVISION WILL GROW -- YOU CAN HELP IT GROW.**

**YOU WILL PROFIT BY ITS GROWTH.**

**JOIN YOUR FELLOW EMPLOYEES WHO ARE WORKING NOW.**

**YOU TOO WILL BE MAKING THE MOST OF YOUR OPPORTUNITIES.**

# **Join Your Fellow Employees On The Job Today**

**WOOSTER DIVISION**

**Borg-Warner**



# TO THE EMPLOYEES OF WOOSTER DIVISION

## HOW DOES 15c PER HOUR PLUS OTHER BENEFITS COMPARE WITH OTHER SETTLEMENTS

Wooster Division employees have been given a general increase of 15c per hour plus additional 5c per hour increases based on the speeded up automatic raises, as well as other benefits.

The question in your mind is how does this 15c per hour increase at Wooster Division compare with what other employees elsewhere are getting or expect to get. Let's see.

A country wide survey was made by The Wall Street Journal less than a month ago and found that most labor men see a 5c per hour pattern of increase for 1953. Here's part of the Wall Street Journal article . . .

"A 10 cent-an-hour settlement this year will be a good one, says a veteran union bargainer who last year won a raft of 16 cent-ers for CIO local unions. This year's average, he figures, will be closer to five or six cents an hour, and most capital labor experts agree."

**Note Particularly the quotation from the CIO Union Bargainer  
Now Let's Take A Look At A Few Recent Settlements Close By:**

F. E. Myers, Ashland, Ohio	3c to 9c
Fixible Co., Loudonville, Ohio	6c to 8c
Hauserman Co., Cleveland, Ohio	10c
Painters and Decorators, Canton, Ohio	7 1/2c
Goodyear Aircraft, Akron, Ohio	10c
Goodyear Tire and Rubber Co., Akron, Ohio	None

**AGAIN WE ASK:**

## HOW DOES 15c PER HOUR PLUS OTHER BENEFITS COMPARE WITH OTHER SETTLEMENTS?

**YOU TOO CAN GET YOUR 15c PER HOUR INCREASE, PLUS  
OTHER BENEFITS IMMEDIATELY.**

**Over 100 Of Your Fellow Employees Already Are Receiving Theirs.**

**JOIN YOUR FELLOW EMPLOYEES  
ON THE JOB**

**WOOSTER DIVISION**

Borg-Warner



TO EMPLOYEES OF WOOSTER DIVISION, BORG-WARNER

# **YOUR FUTURE CAN START TODAY!**

All of us have missed some of our opportunities in the past

## **But Fortunately Opportunity Continues to Knock**

You came to work at the Wooster Division because of the opportunity it offered. That opportunity is greater today than when you hired in.

*More Than 100 of Fellow Employees Now Are  
Earning an Average of \$371.95 Per Month.*

(How does This compare to what you are earning now?)

**Learners Are Receiving Stepped Up Regular Increases As They Qualify.**

**WHY DELAY YOUR OPPORTUNITY ?  
ACT NOW! COME BACK TO WORK AT ONCE**

and remember - - -

**NO ONE CAN DISCRIMINATE AGAINST YOU FOR WORKING  
THE LAW PROTECTS YOU**

(If anyone tells you anything different, they are deliberately trying to mislead you.)

**If You Are Not Already An Employee of Wooster Division  
And Are Interested In An Opportunity For Yourself  
We Have Permanent Jobs Open For Those Who Can Qualify**

**COME TO EMPLOYMENT OFFICE  
or, if you prefer**

**GET ON THE COMPANY BUS AT 6:45 A. M. IN FRONT OF THE COURT HOUSE**

(Those who still refuse to come to work already have lost an average of \$299.29 apiece in wages alone since the strike started.)

**WOOSTER DIVISION  
Borg-Warner**



# TO THE EMPLOYEES OF WOOSTER DIVISION, BORG - WARNER

## DO YOU WANT TO BE THE VICTIMS OF MINORITY STRIKES?

### SHOULD A HANDFUL OF PEOPLE FORCE ALL EMPLOYEES TO LOSE PAY?

Since the outset of negotiations we have attempted to protect you as an employee of the Wooster Division from the CONTINUAL THREAT OF STRIKES. THE RECORD SHOWS that on February 9, 1953, our Works Manager urged the Union Bargaining Committee, in a formal letter describing the Company's proposal, as follows:

"We have put special emphasis on items which encourage proper settlement of all disputes without the necessity of either the employees or the union to make the sacrifices brought on by strikes. Our counter-proposal still permits a strike if the employees wish to follow that course after all sincere efforts at settlement have failed. But emphasis has been put on the mechanics for settlement, rather than on invitations to strike."

**BUT THE INTERNATIONAL UNION, UAW-CIO, HAS CONSISTENTLY REFUSED EVEN TO NEGOTIATE ON ANY MEANS OF ENCOURAGING SETTLEMENT OF DISPUTES.**

**INSTEAD THE UAW-CIO INTERNATIONAL INSISTED ON PROVISIONS TO PREVENT SETTLEMENT OF DISPUTES, AND TO MAKE STRIKES EASIER TO CALL.**

THE RECORD SHOWS that on February 9, 1953, an International Representative of the UAW-CIO, after reading the Company's proposal to encourage settlement of disputes, and to give all employees the right to vote on company premises on the issue of a strike, said:

**"I won't discuss it further."**

Pressed for reasons for objecting to such a provision, the UAW-CIO International Representative REFUSED TO GIVE ANY REASONS and said:

**"We will not accept this under any conditions."**

AND AFTER REFUSING CONSISTENTLY TO DISCUSS THE MERITS OF ENCOURAGING SETTLEMENT OF DISPUTES THROUGHOUT THE ENTIRE NEGOTIATIONS, THE SIX OUTSIDE UAW-CIO INTERNATIONAL REPRESENTATIVES BROKE OFF NEGOTIATIONS RATHER THAN DISCUSS IT FURTHER.

**They said they COULD NOT AGREE TO IT, EVEN THOUGH THE UAW-CIO ITSELF URGED AND SIGNED OTHER CONTRACTS WITH A SIMILAR PROVISION.**

**In Contracts where THE UAW-CIO REALLY WANTED TO CURB STRIKES IT AGREED TO A SECRET BALLOT OF ALL EMPLOYEES!!!!**

### BUT IT REFUSES TO CURB STRIKES IN WOOSTER.

**The idea of a secret ballot on the company's last offer is not new. IT FIRST APPEARED IN UAW-CIO CONTRACTS.**

Legislation REQUIRING A SECRET-STRIKE VOTE OF ALL EMPLOYEES now is pending in Washington. General Electric, at Evandale, Ohio, has made a similar proposal.

### THE PROPOSAL IS DESIGNED TO PREVENT MINORITY STRIKES

The UAW-CIO has told us that under their normal procedure a strike can be called by a two-thirds vote of just those PRESENT AND VOTING at a special meeting. They also have told us that a quorum for such a meeting CAN BE AS LITTLE AS 5% OF THE UNION MEMBERSHIP.

So, with a properly maneuvered meeting — (and you may have seen already how these meetings are maneuvered) — LESS THAN A DOZEN UNION LEADERS CAN CALL more than 200 employees OUT ON STRIKE.

**WOULD THE PRESENT STRIKE HAVE BEEN CALLED IF ALL EMPLOYEES HAD HAD THE CHANCE TO VOTE ON THE CLEAR ISSUE OF A STRIKE?**

How many of you knew exactly what you were voting on when the union took its "strike vote"? ONE OF THE MEMBERS OF THE BARGAINING COMMITTEE ADMITTED IN THE LAST DAY OF NEGOTIATIONS THAT HE DID NOT KNOW WHETHER A "YES" VOTE WAS FOR A STRIKE, OR AGAINST A STRIKE.

### WERE YOU CONFUSED, TOO?

A secret ballot, on a clearly defined issue, held on company premises under impartial supervision, would eliminate confusion, and guarantee that a strike would be called ONLY WHEN A MAJORITY REALLY WANTED A STRIKE.

**BUT THE UAW-CIO INTERNATIONAL REPRESENTATIVES INSIST ON THE RIGHT TO CREATE CONFUSION SO THEY CAN PULL YOU OUT ON STRIKE WHENEVER THEY WANT TO WHETHER YOU LIKE IT OR NOT!**

We have tried to negotiate with the UAW-CIO on this subject BUT THEY FLATLY REFUSE. They gave an unqualified "NO" on the first day the subject was proposed, and gave another unqualified "NO" as they broke off negotiations the fourth time.

**This is one of the "issues" used by the union to keep you on strike. IS THIS ISSUE WORTH LOSING YOUR PAY FOR ???**

**YOU CAN START EARNING REGULAR PAY CHECKS — Increased by 15c an hour — AS OVER 100 OF YOUR FELLOW EMPLOYEES ARE DOING NOW — BY**

**JOINING YOUR FELLOW EMPLOYEES ON THE JOB TODAY**

**WOOSTER-DIVISION**

**Borg-Warner**

**TO EMPLOYEES OF WOOSTER  
DIVISION, BORG-WARNER:**

**JOIN THE PARADE**

**BACK TO WORK**

Every day MORE of your fellow workers are re-  
turning to their jobs.

TODAY there are 121 on the job, earning the 15c in-  
crease and receiving the other benefits.

YOUR JOB STILL IS OPEN FOR YOU IF YOU RE-  
TURN TO WORK

WE ARE HIRING NEW PEOPLE EVERY DAY

BUT

WE WILL HOLD YOUR JOB OPEN FOR YOU UNTIL  
MONDAY, APRIL 20, 1953

MONDAY, APRIL 20, 1953 WE START HIRING FOR  
REPLACEMENT

WE WOULD PREFER TO HAVE YOU RETURN TO  
YOUR OWN JOB

**JOIN THE PARADE**

**BACK TO WORK**

**WOOSTER DIVISION**

Borg-Warner



# TO THE EMPLOYEES OF WOOSTER DIVISION

March 11, 1953, we sent you a copy of the Company's final proposal with a letter from Harry Blythe, part of which read:

*"In many negotiations, certain things are held back, among them a few cents to offer to keep from a strike or to settle a strike after long periods of no work. I want to make it clear that we have not held anything back and we have nothing more to offer. It is my opinion you would rather have the whole picture put before you in that way."*

We have been repeating in letters, by radio, by newspaper and by personal contact the benefits you receive under our proposed contract.

Over half of your fellow employees have accepted these benefits and are now on the job working at increased pay averaging \$35.41 a month more than previously.

Now because of Aircraft Contracts which mean planes to fight the Communists in Korea, and to protect the American way of life throughout the world, it becomes necessary to get back to a full production program at once.

Many of you who have not returned have been told if you do return you will never be able to get a job in a CIO-UAW shop.

That is a false statement. Under the present law, it is just as illegal for the Union to keep you from a job because you came to work as it is for the Company to keep you from a job simply because you joined the Union.

Within the law today, there is no such thing as a closed shop where only Union people can be hired.

To meet that full production program, all jobs must be filled. Therefore, it is necessary to start replacing those employees who do not return to work. Your job is assured only until Monday, April 20th.

The Company has made its position clear from the beginning. The Company is not changing its position.

## This Strike Can Be Ended In Three Different Ways.

- ✓ 1. You can end the strike AS FAR AS YOU ARE CONCERNED by returning to work immediately, and receive the 15c per hour increase and other benefits that more than half of your fellow employees already are receiving.
- ✓ 2. THE UNION can terminate the strike by signing the agreement that the Company has offered.
- ✓ 3. THE UNION can terminate the strike, even without the formality of signing the agreement, by calling off the strike which they started.

## REGARDLESS OF WHICH OF THESE THREE WAY ENDS THE STRIKE . . .

all employees have been assured -- and we will assure you again -- that, when you return to work, all employee benefits, and all employee protective clauses, which are contained in the Company's final offer, will be maintained **WHETHER ANY AGREEMENT IS SIGNED OR NOT.**

✓ Your job is definitely open for you until Monday, April 20, 1953. Those who have returned to work will tell you that there has been no discrimination against them. You may be sure there will be none against you.

**You will be most welcome back to your job.**

The Company bus will leave the Square as usual at 6:45 A. M. to take you to the plant.

**WOOSTER DIVISION**

Borg-Warner

APR 17 1953  
1501 88 414  
DND

SEA 636 GE 14

Wooten Jan Borg-Warner  
4/17/53 2

# TO ALL THOSE WHO ARE INTERESTED IN THE STRIKE AT WOOSTER DIVISION

One month ago today - March 20, 1953 - the UAW-CIO tried to bring production at Wooster Division to a complete standstill in an effort to win their selfish interests. However, due to the loyalty and patriotism of over half of our employees, WE HAVE PRODUCED AND DELIVERED SINCE THAT TIME HUNDREDS OF COMPLETE PUMPS.

Some of these pumps now are on planes to be used in Korea, and more are on the way. THIS MONTH WE MUST PRODUCE THOUSANDS OF PUMPS. (the exact number is security information) TO MEET THE NEEDS OF THE MILITARY. This requires FULL PRODUCTION at Wooster Division.

A majority of the Wooster Division employees already have returned to work. We are filling up the vacant jobs as fast as we can absorb the many new applicants for jobs.

To those former employees who have not returned to work, we have this message:

1. We regret that the UAW-CIO has misled you into giving up what probably was the best job you ever had, and what we believe was the greatest OPPORTUNITY you ever had.
2. We regret that the UAW-CIO has made false and illegal threat of discrimination against you, to prevent you from producing pumps for your Armed Forces and drawing your regular increased pay.
3. We again invite you to claim your job BEFORE YOUR JOB HAS BEEN FILLED BY SOMEONE ELSE.

## To those who never before worked for Wooster Division:

1. We invite you to apply for what we think will be THE BEST JOB YOU EVER HAD.
2. We invite you to INVESTIGATE THE OPPORTUNITY offered at Wooster Division.
3. We definitely promise you the finest working conditions you ever had.

## To the Citizens and Merchants of Wooster:

1. We regret that the UAW-CIO has attempted to DIVIDE the community and DIVIDE the employees.
2. We regret that the UAW-CIO has kept our total payrolls down during this period, by REFUSING TO LET THE EMPLOYEES DECIDE FOR THEMSELVES whether they WANT TO WORK or WANT TO STRIKE. (The UAW-CIO has not even let THEIR OWN MEMBERS vote of the clear issue of accepting the Company's proposal.)

What's been done has been done. It is now our responsibility to get on with the job for Defense. We are on our way. The Company bus will leave the square as usual at 6:45 A.M.

**WOOSTER DIVISION**  
Borg-Warner Corporation



# TO THE FORMER EMPLOYEES OF WOOSTER DIVISION WHO HAVE VACATED THEIR JOBS BECAUSE OF THE STRIKE

## The Real Reason the Union Is Prolonging The Strike is to Prevent You From Running Your Own Show !!

Throughout the negotiations the union has refused to agree to a proposal which would protect YOU, THE COMPANY, THE COMMUNITY, AND THE UNION ITSELF from:

**MINORITY STRIKES**  
**STRIKES ON UNPOPULAR ISSUES**  
**AND**  
**STRIKES ON UNKNOWN ISSUES**

8CA-930

6e2

Wooster Div Borg-Warner  
3/17/53  
2

You Have the Right to KNOW Exactly What You Are Striking For And to Decide Whether YOU Want to STRIKE, or Accept The Company's FINAL OFFER.

In the Present Strike You Were NEVER Given a Chance to Vote on The Final Offer!!

The union says the "strike vote" was taken February 27, 1953. AT THAT TIME THE COMPANY HAD NOT EVEN MADE ITS WAGE OFFER.

SINCE THAT TIME 84 DIFFERENT CONTRACT CLAUSES HAVE BEEN EITHER AGREED TO OR THE COMPANY HAS MADE REVISED PROPOSALS

In other words 84 out of a total of 178 contract paragraphs were different in the final offer than they were at the time of the "strike vote."

### Why Has The Union Prevented You From Voting On The Final Offer?

The union says a second "strike vote" was taken March 15, 1953. But even since that time there have been 17 paragraphs agreed to, and the company made further proposals on 13 others.

**You Never Had a Chance to Vote on These Changes!!**

**Why Does The Union Keep You on Strike And at the Same Time PREVENT You From Voting On The Final Offer?**

More than half of your fellow employees have "voted" in their own way by returning to their jobs at increased pay and other benefits.

**If Your Job Has Not Been Filled, You, Too, Can "Vote" on The Final Offer By Returning to Work.**

**WOOSTER DIVISION**

Borg-Warner Corporation

*Respondent's Exhibit No. 1*

can be held. If this is done it may be unnecessary for the Union to take other steps to secure the proper redress for employee Ethel Moren.

Anticipating an early reply in this matter, we remain

Very truly yours,

(s) Homer Butdorff,

President Local 1239, UAW-CIO.

(s) Russell W. Roback,

Int'l Representative UAW-CIO.

RR:gtt.

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**RESPONDENT'S EXHIBIT No. 2**

**UNITED AUTOMOBILE, AIRCRAFT AND AGRICUL-  
TURAL IMPLEMENT WORKERS OF AMERICA,  
UAW-CIO**

Pesco Local No. 363

Cleveland, Ohio

Joseph W. Greulich,

President.

Edna Raskouskis,

Fin.-Sec.-Treasurer

Peter Farron,

Vice President

Jennie Mazola,

Rec.-Secretary

**WELCOME WOOSTER WORKERS!!**

We, workers at Pesco Products, Cleveland, already organized in UAW-CIO, confidently trust that the salutation above is not just a hope, but a reality soon to come into being—for your benefit as well as our own.

For our benefit—because we still believe in the age old axiom: "In Unity There Is Strength." We will be making the same product and working for the same Cor-



*Respondent's Exhibit No. 2*

poration. Being in the same union—the UAW-CIO—we will be able to control to a better degree our wages, our security and the conditions under which we work. This is doubly necessary, for the Borg-Warner Corporation has built itself an unenviable record as a tough customer in its dealings with its employees.

For your benefit—for the above reasons and because the experience we have gained through the years will immediately be placed at your disposal. Not only our experience, but our warm support and that of the many other UAW-CIO plants in the Borg-Warner chain.

We, at Pesco, have now been in UAW-CIO for ten years, nor have we once regretted our choice of unions. Our contract is an excellent one and is yours to use as a model, if you so desire. Here are a few of the things we have gained through our union:

1. A three year agreement guaranteeing peaceful labor relations,
2. High hourly rates averaging over \$2 an hour,
3. Night shift premiums of 10c and 12c per hour,
4. Similar pay for similar work,
5. Elimination of learner and B and C Classifications,
6. Double time after 10 hours on week days,
7. No time limitation for Stewards and Officers investigating grievances,
8. Top vacation program—up to 120 hours pay for older men,
9. A workable seniority plan guaranteeing job security,
10. Equalization of overtime,
11. Cost-of-living escalator clause and annual improvement increase.

*Respondent's Exhibit No. 2*

Space prevents our listing many more important things, but these and all the others can be yours as well. We have won fine working conditions and courtesy and respect from the members of management who now must deal with us on all problems relating to our employment.

We have heard that certain persons are spreading rumors in your plant inferring that we, in Cleveland, would interfere in your local affairs. Nothing could be further from the truth. You will have your own charter, your own local union, your own contract and seniority and officers elected from your own plant. We, in the UAW-CIO, are proud of the autonomy and independence of our local unions working for our general benefit within the framework of the UAW and the CIO.

We earnestly hope that after Thursday we will be able to work together with you in Wooster for our mutual benefit in the years to come. Let's not be taken in by a divide and conquer technique, but rather let us stand shoulder to shoulder in the UAW-CIO—America's greatest Union.

Good luck and good fellowship!

Membership of Local 363, UAW-CIO  
Pesco Product Workers.

## RESPONDENT'S EXHIBIT No. 5

Wooster, Ohio

June 3, 1953

Wooster Division  
Borg-Warner Corp.  
Wooster, Ohio

Attention: Mr. Harry E. Blythe  
President & General Manager

Dear Mr. Blythe:

As you probably know I am temporary chairman of the Independent Auto Workers Union, which Union now includes a substantial number of workers in your plant.

I realize that our Union is not the bargaining agent in the plant at the present time and of course I had nothing to do with the contract now operative between the company and the production employees. Nevertheless, I feel that it is my duty as representative of the members of our Union to ask the company for some further consideration on wages because of the recent changes in Automotive Contracts. I make this request knowing full well that the contract does not expire until the spring of 1954 and that the company is not bound to raise wages until that time unless they voluntarily wish to do so.

I am asking this because I sincerely feel that you want to keep the employees of Wooster Division, Borg-Warner Corporation in the same economic position as the workers in other leading industries.

I will very much appreciate your earliest consideration of this proposal.

Very truly yours,

Carroll Way

**RESPONDENT'S EXHIBIT No. 7**

December 22, 1953

Borg-Warner Corporation  
Wooster Division  
P. O. Box 394  
Wooster, Ohio

Attn: Mr. Harry E. Blythe, President & General Manager

Gentlemen:

Please be advised that the majority of the production and maintenance employees of the Borg-Warner Corporation (Wooster Division) have affiliated themselves with the International Union, United Automobile Workers of America, affiliated with the American Federation of Labor.

As the collective bargaining agent for the aforesaid units, the Union is desirous of meeting with you at an early date to discuss the matter of wages, hours and working conditions and other provisions to be embodied in a collective bargaining agreement.

Kindly advise the undersigned when we can meet with you for the purpose set forth herein.

Very truly yours,

Int'l. Union, United Automobile  
Workers of America A.F. of L.  
Eugene Martin  
Regional Representative

EM/x

cciu#17afl

cc. Mr. G. Barker, Personnel Director



**RESPONDENT'S EXHIBIT No. 9**

WOOSTER DIVISION

Borg-Warner Corporation

P.O. Box 394

Wooster, Ohio

January 20, 1954

Since I last wrote you the Company has received official demands from two different unions seeking negotiations toward a new union contract. These unions are UAW-AFL and UAW-CIO.

The UAW-AFL now seeks to negotiate a contract, stating that it now represents the majority of the employees. The UAW-CIO seeks to negotiate an agreement to succeed the present contract which will expire on March 20, 1954.

The Company also has received a notice from the National Labor Relations Board that the UAW-AFL has filed a petition to be certified as collective bargaining agent stating that it represents a majority of the employees in the bargaining unit.

In the face of demands to negotiate by two different unions, the Company cannot negotiate with either one until the National Labor Relations Board determines which union really represents you. This means that an election must be held.

The Company will cooperate in any way it can to obtain an election at the earliest possible date. If both of the unions involved will also agree that an election can be held, then this question can be settled by the time the present contract expires.

I have given you this information because both unions have indicated that they wish to negotiate with the Company concerning wages, among other things, and I thought you should know that we cannot negotiate with either union

*Respondent's Exhibit No. 9*

concerning this until we know which union is the bargaining agent.

For your information, I am attaching copies of letters to both unions in response to their requests to open negotiations.

Sincerely,

Wooster Division,  
Borg-Warner Corporation,  
(s) Harry,  
Harry E. Blythe,  
President and General Manager

December 24, 1953

International Union  
United Automobile Workers of America  
A. F. of L.  
13503 Kinsman Road  
Cleveland 20, Ohio  
Attention: Eugene Martin

Gentlemen:

We have received your letter of December 22nd, and in the same mail we received a copy of the petition which you have filed with the National Labor Relations Board.

We are awaiting official action on the part of the National Labor Relations Board.

Very truly yours,

Wooster Division,  
Borg-Warner Corporation,  
(s) Harry E. Blythe,  
President.

*Respondent's Exhibit No. 9*

January 20, 1954

Mr. Wayne Patterson, President  
Local Union No. 1239, UAW-CIO  
Wooster, Ohio

Dear Mr. Patterson:

We acknowledge receipt of a notice dated January 12, 1954 in which you propose to negotiate a modified contract to succeed the contract dated May 5, 1953, and request the Company to meet and confer with you for this purpose.

Prior to receipt of this notice, we received a letter dated December 22, 1953 from the United Automobile Workers of America (AFL), in which the United Automobile Workers of America (AFL) states that it represents a majority of our production and maintenance employees and demands that we bargain with the United Automobile Workers of America (AFL) with respect to wages and other terms and conditions of employment. In the same mail, also under date of December 22, 1953, we received from the National Labor Relations Board in Cleveland a letter advising that a petition had been filed with the Board by the United Automobile Workers of America (AFL), seeking an election to determine whether or not it represents a majority of the employees.

We have advised the United Automobile Workers of America (AFL) that the question must be settled by the National Labor Relations Board, and that the law does not permit us to negotiate with the United Automobile Workers of America (AFL) concerning the terms of a labor contract until the Board determines who is the collective bargaining agent of our employees.

The law compels us to take the same position with you. It being impossible for us to negotiate with either you or

*Respondent's Exhibit No. 9*

the United Automobile Workers of America (AFL) until the representation question is settled, we presume you will wish to expedite the settlement of this question by urging the National Labor Relations Board to conduct an election as promptly as possible.

We wish to make clear, of course, that meanwhile we fully recognize and will respect your position as the bargaining agent under the contract dated May 5, 1953, until it expires on March 20, 1954.

We sincerely hope that the Board will conduct an election on or before the expiration date of the present contract in order to resolve the question of representation. We will cooperate in every reasonable way to make this possible.

Very truly yours,

Wooster Division,  
Borg-Warner Corporation,  
(s) N. E. Seymour,  
Works Manager.



**RESPONDENT'S EXHIBIT No. 10****60-DAY NOTICE TO EMPLOYER**

Date January 12, 1954

To Borg-Warner Corporation, Wooster Division  
Wooster, Ohio

This is a 60-day notice to you that we propose to modify our collective bargaining contract.

We hereby request you to meet and confer with us for the purpose of negotiating the terms of a modified contract.

The modifications which we propose are, among others, as follows:

1. Wages
  2. Economic issues and
  3. Contract provisions
- Etc.

While this notice is given pursuant to the Labor-Management Relations Act, 1947, the undersigned Union waives none of its rights and hereby expressly reserves all objections to the constitutionality, validity, and applicability of each and all of the provisions of said Act.

Received

1-13-54

GB

United Automobile, Aircraft & Agricultural Implement Workers of America, Local 1239 UAW-CIO,  
By Patrick J. O'Malley, Director,  
Region No. 2, UAW-CIO.

Form of Notice Approved:

By (s) Patrick J. O'Malley,

Region No. 2, UAW-CIO,

403 Buckeye Bldg.,

Cleveland 15, Ohio.

**RESPONDENT'S EXHIBIT No. 13**

**YOU** make the comparison!

You have

"heard it said"

but . . .

Here Is The

**PROOF**

Here Is More Than Conversation

**HERE ARE FACTS!**

On the opposite page you will find listed the names, occupations and earnings for the week ending Nov. 23, 1952 for a number of employees of the Cleveland Pesco Division of the Borg-Warner Corporation.

The rates are clear evidence of the ability of a real labor union to make gains for its membership. Wooster Division workers should give this careful consideration in view of Thursday's representation election.

It has come to our attention that the Regional Wage Stabilization Board is about to announce a wage increase for Wooster Division employees. While this is good news it should be pointed out the company submitted its petition based on Wooster area rates.

If the UAW-CIO becomes bargaining agent it will insist that a new petition be filed based on Cleveland area rates and on industry rates in the automotive field. This will mean a further substantial increase for Wooster Division employees.

**Vote Right — On The Right**

**VOTE "X" FOR U.A.W.-C.I.O.**

**— Don't Forget! —**

**Party and Rally**

**Tonight 7:30 — VFW Hall**

**W. Liberty St. — Wooster**

*Respondent's Exhibit No. 13*

**UAW-CIO Won These Rates  
In Pesco — Cleveland**

(Actual check stubs will be available for inspection at Wednesday night's meeting.)

Clock No.	Name	Classification	Hours	Gross Earnings 11-23-52
2449	Jerome Ritzer	Automatic Screw Mch. Op....	44.0	\$110.00
2267	S. Niccoli	Automatic Screw Mch. Op....	53.0	130.90
2151	Ralph D. Amico	Drill Press .....	55.0	120.00
2340	James Tribble	Drill Press .....	55.9	123.14
2206	Fred J. Barrick	Tool Room Grinder Hand...	53.0	131.52
2115	Arthur Aytay	Tool Room Bench Hand ....	52.3	135.61
2191	Anthony Trennel	Tool Room Jig Borer.....	53.0	132.04
2251	John Fiorille	Turret Lathe .....	53.0	123.19
2341	John Kantor	Turret Lathe .....	52.7	122.25
2217	Anton Reisig, Jr.	Warner & Swasey.....	52.2	120.10
2266	Joseph Marnick	Grinder .....	55.0	125.00
2729	Joe Perenez	Grinder .....	54.0	122.00

Here is concrete proof showing what can be accomplished through union organization of the type provided by UAW-CIO. At Wednesday night's meeting we will also have available for your inspection pay stubs from Borg-Warner's Muncie, Indiana plant. Here, too, wages are materially higher than those being paid by the corporation's Wooster plant. Yet, investigation shows the cost of living to be as high in Wooster as it is in Cleveland or Muncie.

We believe Wooster's workers are entitled to earn as much as people working for the same corporation in Muncie or Cleveland. Fourteen Borg-Warner plants have won high wages through UAW-CIO.

*Respondent's Exhibit No. 13*

Let's Do It Here!

**VOTE "X" FOR UAW-CIO!**

(On The Right Side Of The Ballot)

It's Just Good Business To . . .

**JOIN UAW-CIO**

1,300,000 workers in America's automobile industry  
have found this to be true!

15,000 Borg-Warner workers in fourteen plants listed  
below are now covered by UAW-CIO contracts:

Borg and Beck . . . . .	Chicago, Illinois . . .	Local 484, UAW-CIO
Detroit Gear . . . . .	Detroit, Michigan . . .	Local 42, UAW-CIO
Engineering Division . . . . .	Detroit, Michigan . . .	Local 412, PAW-CIO
Ingersoll Products . . . . .	Kalamazoo, Mich. . . .	Local 447, UAW-CIO
Long Manufacturing . . . . .	Detroit, Michigan . . .	Local 314, UAW-CIO
Long Mfg., Limited . . . . .	Windsor, Ontario . . .	Local 195, UAW-CIO
Mechanics Universal Joint . . . . .	Rockford, Illinois . . .	Local 225, UAW-CIO
Mechanics Universal Joint . . . . .	Memphis, Tenn. . . .	Local 237, UAW-CIO
Morse Chain Company . . . . .	Detroit, Michigan . . .	Local 42, UAW-CIO
Pesco Products Division . . . . .	Cleveland, Ohio . . .	Local 363, UAW-CIO
Rockford Clutch . . . . .	Rockford, Illinois . . .	Local 803, UAW-CIO
Warner Automotive Parts . . . . .	Auburn, Indiana . . .	Local 825, UAW-CIO
Warner Gear Division . . . . .	Muncie, Indiana . . .	Local 287, UAW-CIO
Ingersoll Steel Division . . . . .	New Castle, Ind. . . .	Local 729, UAW-CIO

Join and vote for the Union that really represents  
auto workers!

Choose the Union chosen by the vast majority of  
Borg-Warner workers!

**Vote Right — On The Right**

Don't sign your name or make any other mark. It will  
Void your ballot.

Simply Mark An "X" In The Square Of Your Choice  
**UAW-CIO**



It's The First Step Toward Higher Wages And  
Job Security!

— Visit our office at 423 E. Liberty St. — Phone 982 —



**RESPONDENT'S EXHIBIT No. 14**

An Advertisement by the workers of the  
Borg-Warner Corp.      Wooster, Ohio

**WE WANT TO  
WORK**

If you think we like to be on strike, think again! We'd rather be in there making good pumps for the Navy and Air Force.

— BUT —

There is a difference of opinions as to what are decent wage and security conditions. We, the workers, don't want pie-in-the-sky . . . just enough to enjoy some of the things of earth, and assurance that we will not be fired without cause at the whim of a company official.

Wooster's Wages Average Lower  
Than Any Other Industrial Area.  
Wooster's Living Costs Average  
More Than Other Nearby Areas.

This Ad is paid for by the UAW-CIO, Local 1239

2

**RESPONDENT'S EXHIBIT No. 15**

An advertisement by the workers of the  
Borg-Warner Corp. Wooster, Ohio

**WHO ARE YOUR CUSTOMERS,  
MR. BUSINESSMAN?**

Can You stay in business on the patronage of the  
few dozen factory owners and managers?

Or would you rather have the patronage of the  
more than 3000 workers?

We, the workers of Borg-Warner Corporation,  
know that this strike has hurt your business. It  
hurts us, too . . . right in the same place, the  
pocketbook.

Our efforts to get a fair wage and working agree-  
ment will help you too. As we prosper, you will  
profit.

Wooster Living Costs Are As  
High Or Higher Than Most Places  
Wooster's Factory Wages Are  
Lower Than Surrounding Areas.

This Ad is paid for by the UAW-CIO, Local 1239

**RESPONDENT'S EXHIBIT No. 16**

The Issue Is:  
**GOOD FAITH**

Your friends and neighbors, who work at Borg-Warner,  
 are on strike to establish a principle.

They Want To Be Dealt With In Good Faith

Borg Warner refuses to make the International UAW-CIO a party to the contract; although the UAW-CIO was certified by the Government as the bargaining agent.

This Is Not Good Faith

Borg Warner refuses to pay in Wooster the rates it is willing to pay for identical work 80 miles away and, in fact, has not even offered to meet the rates already being paid right here in Wooster.

This Is Not Good Faith

Borg Warner has offered the workers a contract full of fish-hooks, tricks, and booby-trap clauses

One that turns voting control back to those who voted Against the union.

One that forces Union committeemen to lose pay if they process a grievance.

One that "reviews" wages periodically instead of raising them on schedule.

This Is Not Good Faith

Perhaps the best illustration of the kind of thing Borg Warner is trying to do to your neighbors and friends who work at their plant can be seen in the "Vacation Pay" clause.

*Respondent's Exhibit No. 16*

The Union has asked for a clause which actually grants vacations . . . . and gives the worker a percentage of his pay to finance it. This is a normal and usual provision, and exists in other plants right here in Wooster . . . .

Borg Warner offers Three Weeks with Full Pay to all workers with Fifteen Years of service . . . . and Two Weeks to all workers with Five Years of service.

It's A New Plant . . . . Nobody Has Two Years Of Service There Yet  
and only a handful has more than one year.

So Borg Warner's Generous Vacation Pay Is For 1968 . . . . And The Workers Want Something For 1953!

It's a small thing, perhaps, but it reveals much. It shows that Borg Warner is playing tricks on its workers, and is talking double-talk to You.

Borg Warner management has fourteen contracts with the UAW-CIO in plants around the country . . . . and the management knows perfectly well that the proposals it has offered . . . . can not possibly be accepted . . . . will Not be accepted. These proposals can not possibly have been offered in good faith.

When Borg Warner Bargains In Good Faith  
With Its Workers

The Strike Will Be Over.

Encourage your friends to stand firm.

(International UAW-CIO)



## RESPONDENT'S EXHIBIT No. 17

### REPORT TO THE PEOPLE OF WOOSTER

When we reported some of the absurdities offered by Borg-Warner to your friends and neighbors, we laid a bit of stress on the Vacation Plan they propose.

Since then the Company (quite properly) has charged us with not reporting the Rest of their Vacation Plan.

#### Here Goes

- Fifteen years of service.....Three Weeks.
- Five years of service.....Two Weeks.
- One year of service.....One Week.
- Six Months Of Service.....Two Days.
- Less Than 6 Months, No Vacation.

And All But Four At Borg Warner Have Less Than  
1 Year's Service!

(The Borg-Warner Vacation Plan goes like this: You pack the car, load in your family, drive to a vacation spot, unload the car, spend the night, get up and load the car again, and drive home . . . and that's the end of your Borg-Warner Vacation.)

Sorry We Neglected To Tell You About It Sooner.

UAW-CIO Local 1239

**RESPONDENT'S EXHIBIT No. 18****STRIKE NEWS BULLETIN**

Your Union report that the United States mediation and conciliation conciliator Steve Eddy has arranged a tentative meeting for 1.00 P.M. Tuesday, March 31st. The Strike has been in effect since March 20th. There are about 30 issues still in dispute.

The main points of difference to be resolved are wage rates, Union Security, paid time for the handling of grievances, no strike clause and wage reopening. The Union proposes that there shall be no strike until the grievance procedure has been exhausted. The Company and the Union already have tentatively agreed to the terminal step of final and binding arbitration for all issues, except production standards and wage reopenings. The Union's position on this issue is the same as has been agreed to in all other Divisions of Borg-Warner Corporation, under UAW-CIO contract.

The Company insists that non-Union employees shall be allowed to vote on any issue in dispute, the election to be conducted on Company property. Such a position is a violation of the UAW-CIO's International Constitution. The Company's 15c offer, is short an average of 33c an hour to that paid in the Borg-Warner's Bedford, Ohio Plant, who manufactures the identical product. The Company's wage offer carries with it a wage freeze for one year. In the other fourteen plants under UAW-CIO contract, all provide for a cost of living adjustment up or down based on the B.L.S. index and further provide a 4c annual improvement factor.

*Respondent's Exhibit No. 18*

\* \* Notice \* \*

The Relief committee will meet every day from 1:00 P.M. until 1:30 P.M., bring bills or other evidence of your need, to the union headquarters at 423 E. Liberty Street.

United We Stand and Divided We Fall.

A United Union Is A Strong Union.

Local No. 1239 UAW-CIO

Publicity Committee

3-30-53

**RESPONDENT'S EXHIBIT No. 19**

**DON'T FALL FOR THE COMPANY LINE  
BY CROSSING THE PICKET LINE**

The company is trying to divide and conquer; and break your Union by promising to provide a means of transportation past the picket line into the plant, this morning. The foremen have been telephoning you in your homes talking to you and many of your wives telling them that the wages and other fringe benefits that have been offered by the Company will go into effect immediately, even though the Contract has been turned down as not being acceptable, by the membership of your Union. And this must be done through your elected officers and Committee.

It is the opinion of your Bargaining Committee that the Company even though they have shown willingness to meet—and discuss—have not put forth an honest effort to resolve the issues in dispute, even though more than enough time has elapsed in which an agreement could have been reached.

On the eve of the beginning of your strike your Bargaining Committee in an attempt to resolve all issues in dispute proposed thirty (30) changes or modifications from the former union proposal, subject to the approval of the membership, if an Agreement could be reached in order to avoid a Strike, however the Company refused to except this offer. A

Your Committee then requested the company to give a counter proposal on these thirty (30) points of dispute which they refused. The company did however submit six (6) minor changes which were not acceptable to your Committee or which would reasonably indicate any settlement could possibly be reached by continuing negotiations.

These final proposals are being reproduced to be given to every worker so there will be no mistake as to your Unions position on the issues.

Stay 100% Behind Your Committee And Win:

~~Do Not Cross The Picket Line~~  
 Have The Kind Of Union Security You Justly Deserve  
 Who Will Suffer If You Cross The Picket Line????

You Or Harry????

Local 1239 UAW-CIO

(s) Wayne J. Hunter, Pub. Chair.

3-23-53



**RESPONDENT'S EXHIBIT No. 20-A****YOUR UNION'S POSITION**

At the Court House yesterday morning your Attorney, Ralph Rudd, Executive Board, and your International Union Representative met in the Common Pleas Court House at Wooster, Ohio before Judge Elmo Estill of Holmes County in the absence of Judge Walter Moughy on the application for temporary Restraining order against your Union.

Attorneys Rudd for the Union and Criethfield for the Corporation, met in the Judge's private Chambers, and from the discussion that followed, it was very obvious, Attorney Rudd reported to the Executive Board that Judge Estill would issue a restraining order on the basis of mass picketing regardless of whether or not the picketing was orderly and without violence and further indicated that there would be a limiting of the number of pickets for each entrance to the plant. He mentioned two (2) pickets at each gate should be sufficient.

It was quite evident to your Attorney and Executive Board that it would be useless to plead our side of the case, especially since Judge Estill mentioned the fact that he would limit the number of witnesses that would be heard. In the face of the foregoing facts an agreement was entered into in good faith between the Corporation and the Union.

\* \* \* \* \*

**RESPONDENT'S EXHIBIT No. 20-B**

The welfare of your family depends upon your solid support behind your Union. Do not break the picket line for the 15c an hour wage increase that the company is promising to pay you in their announcements to the newspaper and radio when it has been rejected by you members at your last Union meeting. They can take it away too. The company is trying to divide and conquer, and break your union by making you accept the 15c per hour without giving you adequate contract provisions to guarantee you Job Protection. This is an old strike breaking tactic the Company is using to destroy your union, by offering you something that has not been acceptable to you without the normal protection of a Union Contract signed by your Union and Company. If You Need Financial Aid, See Your Committee Immediately And Aid Will Be Given You.

(s) Wayne J. Hunter,  
Publicity Chairman,  
Local 1239 UAW-CIO.

**RESPONDENT'S EXHIBIT No. 21**

**REPORT BY WEEK OF HOURLY RATED EMPLOYEES  
OF THE WOOSTER DIVISION PAYROLL**

November 22, 1952 to date

Week Ending	No. of Employees	Week Ending	No. of Employees
11/22/52.....	95	8-9 .....	236
11-30.....	105	8-16.....	239
12-7 .....	113	8-23.....	237
12-14.....	122	8-30.....	244
12-21.....	131	9-6 .....	255
12-28.....	132	9-13.....	264
		9-20.....	265

*Respondent's Exhibit No. 21*

Week Ending	No. of Employees	Week Ending	No. of Employees
1/4/53.....	143	9-27.....	281
1-11.....	149	10-4.....	281
1-18.....	156	10-11.....	287
1-25.....	160	10-18.....	298
2-1.....	162	10-25.....	299
2-8.....	174	11-1.....	309
2-15.....	179	11-8.....	311
2-22.....	191	11-15.....	339
3-1.....	204	11-22.....	352
3-8.....	223	11-29.....	354
3-15.....	231	12-6.....	356
3-22.....	234	12-13.....	355
3-29.....	233	12-20.....	353
4-5.....	234	12-27.....	356
4-12.....	236		
4-19.....	244	1/3/54.....	353
4-26.....	265	1-10.....	351
5-3.....	178*	1-17.....	352
5-10.....	211	1-24.....	351
5-17.....	231	2-7.....	354
5-24.....	232	2-14.....	348
5-31.....	230	2-21.....	348
6-7.....	232	2-28.....	344
6-14.....	229	3-7.....	342
6-21.....	228	3-14.....	336
6-28.....	229	3-21.....	334
7-5.....	231	3-28.....	331
7-12.....	227	4-4.....	331
7-19.....	227	4-11.....	329
7-26.....	231	4-18.....	326
8-2.....	233		

\*At this point we stopped carrying employees on Personnel Report who had not returned to work, and started carrying them again as they returned to work.

## RESPONDENT'S EXHIBIT No. 22

EMPLOYEES IN BARGAINING UNIT AT WORK  
DURING STRIKE

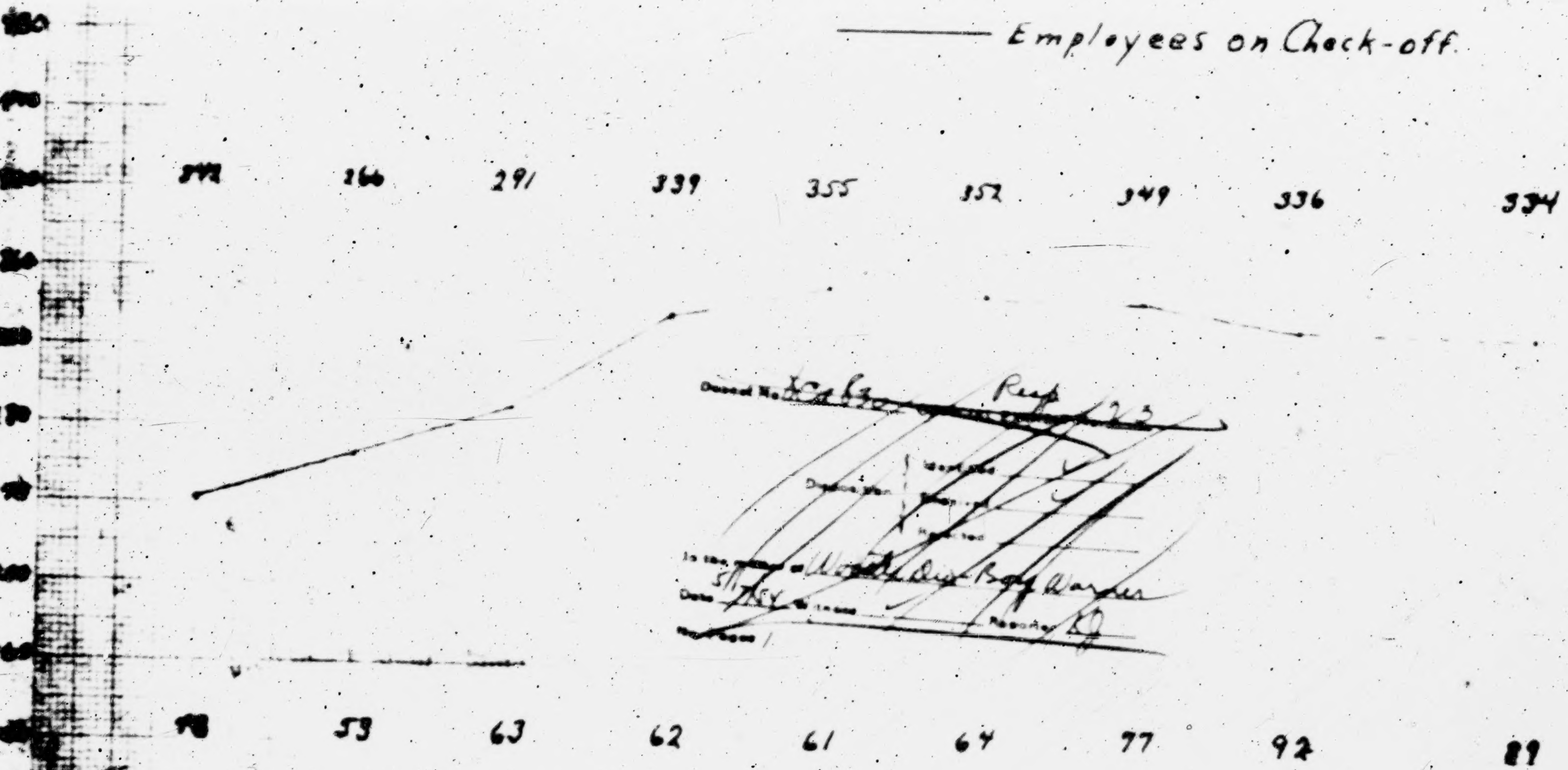
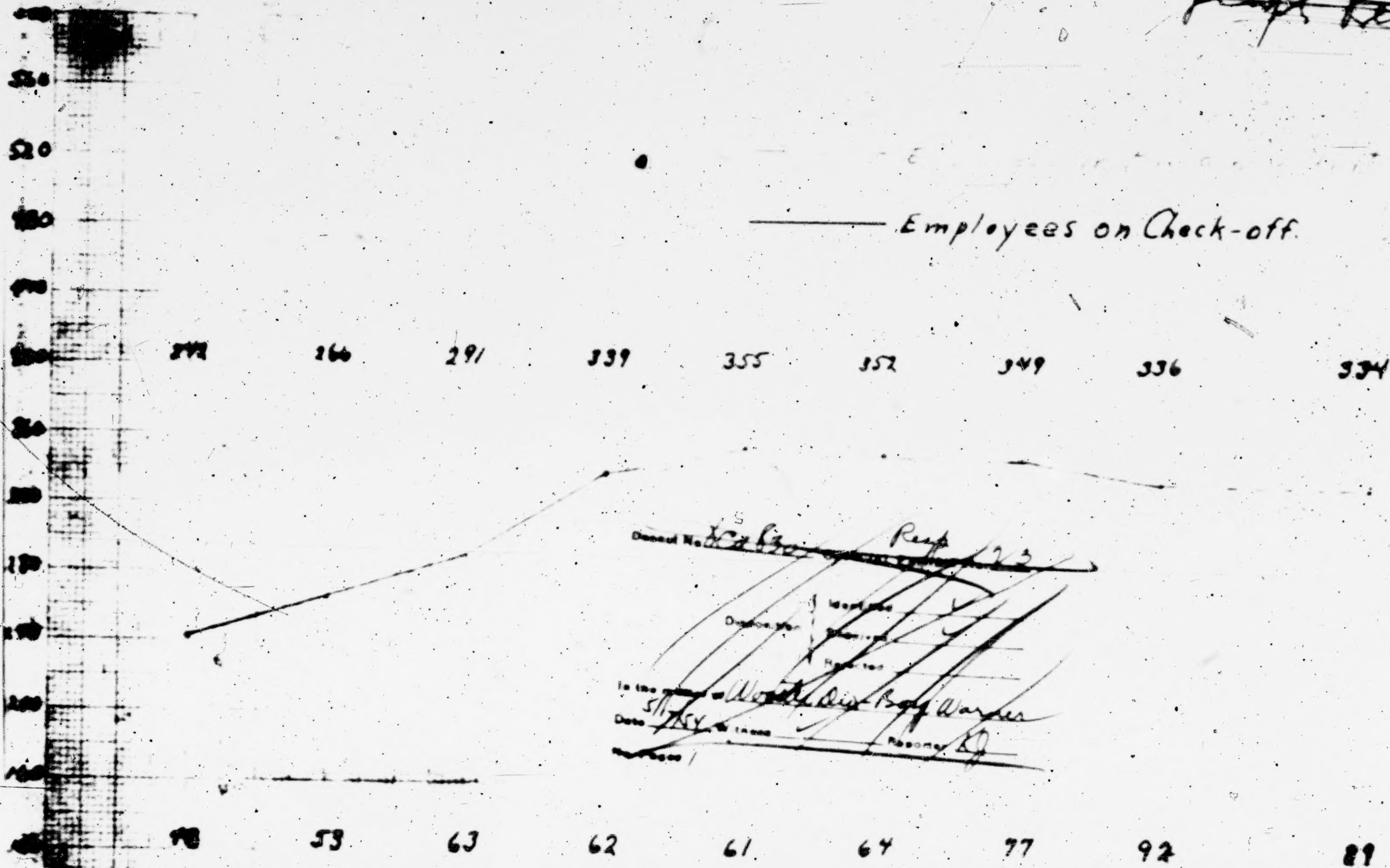
3-20-53	—	2	4-13-53	—	108
3-25-53	—	26	4-14-53	—	112
3-26-53	—	64	4-15-53	—	114
3-27-53	—	70	4-16-53	—	118
3-28-53	—	69	4-17-53	—	119
3-29-53	—	64	4-18-53	—	118
3-30-53	—	73	4-19-53	—	39
3-31-53	—	73	4-20-53	—	125
4-1-53	—	74	4-21-53	—	132
4-2-53	—	74	4-22-53	—	136
4-3-53	—	74	4-23-53	—	148
4-4-53	—	74	4-24-53	—	152
4-6-53	—	81	4-27-53	—	164
4-7-53	—	96	4-28-53	—	168
4-8-53	—	98	4-29-53	—	169
4-9-53	—	104	4-30-53	—	163
4-10-53	—	102	5-1-53	—	169
4-11-53	—	104	5-3-53	—	61
4-12-53	—	29			

## Average

Week Ending	3-29	—	59
	4-4	—	74
	4-12	—	98
	4-19	—	115
	4-24	—	139
	5-3	—	167



*Rep 23*





**RESPONDENT'S EXHIBIT No. 31****HEYWOOD-WAKEFIELD CO. AND FURNITURE  
WORKERS—CIO**

Should the parties fail or be unable to arrive at a mutually satisfactory agreement with respect to a revision of the wages or wage rates including the bonus, within the aforesaid sixty (60) day period, then in such event and at the end of the sixty (60) day period the Union may strike if so authorized by a vote of the employees and if the Union sent the Company the sixty (60) day notice, and/or the Company may close down the plant or take such other action as is lawful in the event that the Company sent the Union the sixty (60) day notice, it being the intention of the parties that the balance of the Agreement shall nonetheless remain in effect.

---

**RESPONDENT'S EXHIBIT No. 32****OLIVER CORP., CHARLES CITY, IOWA, AND  
FARM EQUIPMENT WORKERS**

During the life of this agreement, the company will not cause any lockout (not including layoffs), nor will the union cause any strikes, or cessations of work of any kind, until all the bargaining procedures as outlined in this agreement have been exhausted, and in no case on which an arbitrator shall have ruled, and in other cases on which an arbitrator is not empowered to rule until after negotiations have continued for at least seven (7) days at the last step of the grievance procedure, and until a strike vote has been taken in accordance with the union's constitution, pursuant to a bulletin posted on the plant bulletin boards to the effect that the vote will be taken.

**RESPONDENT'S EXHIBIT No. 24-A**

Homer Butdorff  
West Salem, Ohio

July 28, 1953

Norman Seymour  
Works Manager  
Borg-Warner Corporation  
Wooster Division  
Wooster, Ohio

Dear Sir:

In accordance with Article 15.6 of the existing Agreement between the Company and Local 1239, UAW-CIO, we are serving notice that the Daughtery and Franco grievance be submitted to arbitration for final disposition.

We are making recommendation that an arbitrator be selected from the list we are submitting for your approval.

Jacob J. Blair  
Ralph T. Seward  
Albert I. Cornsweet  
David A. Wolff  
Paul N. Lehoczky  
Howard A. Cohen  
Joseph G. Stashower

We would appreciate your prompt attention in this matter.

Very truly yours,  
(s) Homer Butdorff, Chairman  
Shop Committee  
Local 1239, UAW-CIO.

**RESPONDENT'S EXHIBIT No. 33****JOYCE, INC. AND UNITED SHOE WORKERS—CIO**

The union and its members agree that they will not engage in any slowdown, strike or other stoppage of work which will interfere with production until the procedure provided in Sections X and XI hereof are first exhausted, and not until a majority of the production employees covered by this agreement have approved such action. "Employees" as used in the previous sentence is defined to mean only those employees who are present and working on the date the vote is taken to determine the approval of the majority, and who are either members of the union or are paying to the union a sum equivalent to union dues. Only such persons, furthermore, shall be permitted to vote to determine whether or not a majority of said employees approve the action being taken by the union. It is further understood that the vote for the purpose of obtaining an approval from a majority of said employees shall be taken during working hours on company premises, and that at said time any person not eligible to vote shall absent himself completely from the plant during the time of the vote.



**RESPONDENT'S EXHIBIT No. 24-E**

August 21, 1953

Mr. Joseph G. Stashower  
330 Hanna Bldg.  
Cleveland, Ohio

Dear Mr. Stashower:

From a list of seven arbitrators submitted to us by Local 1239, UAW-CIO, our company has chosen you as an impartial arbitrator in a grievance dispute.

We, therefore, jointly request with Local 1239, UAW-CIO, that you arbitrate a grievance dispute for us. We have tentatively chosen the date of September 11, 1953, at 2:30 P. M.

Will you please let us know if you are available and if this date will fit in with your plans. If not, will you kindly give us a future date which will be convenient to you.

Sincerely yours,

For the Company (s) G. A. Barker,  
Manager of Personnel.

For the Union (s) Homer Butdorff,  
President Local 1239  
UAW-CIO.


G. A. Barker

hi j

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**MICROCARD**  
TRADE MARK 

**RESPONDENT'S EXHIBIT No. 24-G****INTERNATIONAL UNION UNITED AUTOMOBILE,  
AIRCRAFT, AGRICULTURAL IMPLEMENT  
WORKERS  
OF AMERICA (UAW-CIO)****(Letterhead Omitted)**

August 27, 1953

Mr. Seymour  
Works Manager  
Borg Warner Plant, Wooster Division  
Wooster, Ohio

Dear Sir:

Pursuant to Article 15-6, Sub-Section B, and in accordance with our telephone conversation of August 27, please be advised the issue to be submitted to arbitration is the failure of Management to promote James Franco to the job of Set-up man. This action constituted a violation of Article 14, Sections 1 through 4 inclusive.

The Union contends that employe Franco had equal or greater ability than the other employe who requested the job. The Union further contends that employe Franco was the senior employe of those who applied for the job and was therefore entitled to the promotion which he requested.

Sincerely yours,

(s) James Simone

International Representative  
Region 2, UAW-CIO

JS:ggt

liu1794cio

**RESPONDENT'S EXHIBIT No. 25**

July 9, 1953

Mr. Harry Blythe, President  
Wooster Division Borg-Warner Corp.  
Wooster, Ohio

Dear Sir:

The Borg-Warner Corporation has followed in line with other leading corporations in the Automobile and Aircraft industry, when served notice by the Union, in agreeing to meet the cost of living adjustment and skill trade inequities established by the General Motors Corporation and the UAW-CIO.

Since Wooster Division is a division of the Borg-Warner Corporation, and since this program has been established in other Borg-Warner plants, we believe we are entitled to the same consideration. We hope the management of Wooster Division Borg-Warner will give this their undivided attention and full consideration.

Very truly yours,

Shop Committee

Local 1239 UAW-CIO

Homer Butdorff, Chairman

cc: Norman Seymour, Works Mgr.

Jerry Barker, Personnel Mgr.

P. J. O'Malley, Region 2 Director, UAW-CIO

Homer Butdorff, UAW-CIO Pres. Local 1239

Glenn Taylor, R.S., UAW-CIO, Local 1239



**RESPONDENT'S EXHIBIT No. 34****GLACIER PARK CO. AND CARPENTERS—AFL**

Until the provisions of Paragraph 1 (invocation of grievance procedure for disputes under the contract) hereof have been exhausted and approval is registered by a majority vote thru secret ballot at a meeting of Union members currently on the payroll, no strike or related job action shall be taken by the Union, and then not until such proposed action has been formally submitted to the Employer by written notice ten (10) days in advance of its effective date. The Employer shall, on the other hand, refrain from any lockout action to the same extent of compliance with Paragraph 1 and ten (10) days' written notice in advance.

**RESPONDENT'S EXHIBIT No. 35****WEYERHAUSER TIMBER CO. AND  
WOODWORKERS—CIO**

Where no agreement can be reached by the two standing committees, the facts in dispute as known to the Union shall be placed in writing by the Union representatives and given to the Company. The facts as known to the Company shall be placed in writing by the Company and given to the Union. Both statements shall then be presented to the union member employees for their information and such action as they, by majority vote, may care to take that is satisfactory to the Union.

No strikes shall be caused or sanctioned by the Union or no lockouts shall be instituted by the Company until the provisions of . . . (the preceding paragraph) and the intent of this Agreement have been carried out.

**RESPONDENT'S EXHIBIT No. 36****MISSOULA WHITE PINE SASH CO. AND  
CARPENTERS—AFL**

Should the Company and Committee of the Union fail to agree on any dispute it is agreed that before any strike vote is taken by the Union, a special meeting of the Union membership who are on the payroll of the Company shall be called, at which special meeting there shall be a full and open discussion of all matters in dispute by the Union Committee and the Company. The Union may call in its business agent or Union representative and the Company in such case may call in its representative. It is understood that such special meeting is in the nature of an informative meeting and that no person other than the authorized Union Committee and its representative shall be permitted to participate in discussion and arguments, except that it is agreed that any member present at the meeting may, without argument or discussion, ask any question pertaining to the subject matter under discussion. Such special meeting shall be conducted in accordance with parliamentary practices. No personalities shall be engaged in and no disturbance of the orderly conduct of the meeting permitted under penalty of expulsion from the meeting.

## RESPONDENT'S EXHIBIT No. 28

United States of America  
NATIONAL LABOR RELATIONS BOARD  
**PETITION**

When this Petition is filed by a labor organization or by an individual or group acting in its behalf, the Petition will not be processed unless the labor organization and any nation or international of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions.—Submit an original and four (4) copies of this Petition to NLRB Regional Office in the Region in which the employer concerned is located.

If more space is required for any one item, attach additional sheets, numbering them accordingly.

Attachments Required.—Except when this Petition is filed by an employer under section 9 (c) (1) (B) of the act, there must be submitted with the Petition proof of interest in the form of dated authorization or membership application cards, or other documentary evidence signed by employees, together with an alphabetical list of their names.

### Do Not Write In This Space

Case No.

8-RC-2154

Date Filed

12-22-53

Compliance Status Checked By:

nm

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority:

1. Purpose of this Petition (Check only the one box which is appropriate)

- A. ☒ RC—Certification of Representatives (Individual, Group, Labor Organization).—A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner, and Petitioner desires to be certified as representative of the employees for purposes of collective bargaining, pursuant to section 9 (a) and (c) of the act.

2. Name of Employer

Wooster Division of Borg-Warner Corporation

3. Address(es) of Establishment(s) Involved (Street and number, city, zone, and State)

Wooster, Ohio

4a. Type of Establishment (Factory, mine, wholesaler, etc.)

Manufacturer



*Respondent's Exhibit No. 28*

4b. Identify Principal Product or Service

Aircraft parts

5. Description of Unit Involved (If more space is needed, continue on another sheet)

Included

All production and maintenance employees, including plant clerical employees, stock and tool handlers.

Excluded

Production control department employees, industrial and product engineering department employees, statistical quality control employees, timekeepers and checkers, laboratory employees, office clerical employees, nurses, professional employees, guards and supervisors as defined in the Act.

(If you have checked box 1 A (RC) above, check and complete EITHER item 7a or 7b, whichever is applicable)

6a. Number of Employees in Unit

325

6b. Is This Petition Supported by 30% or More of the Employees in the Unit?

☒ Yes ☐ No

7a. ☐ Request for recognition as Bargaining Representative was made on 12-22-53

(Month, day, year)

and Employer declined recognition on or about

No reply

(If no reply received, so state).

(Month, day, year)

Name

International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO

Affiliation

UAW-CIO

Address

403 Buckeye Bldg., 2082 East 4th St.  
Cleveland 15, Ohio

9. Date of Expiration of Current Contract, if Any (Show month, day, and year)

3-20-54

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

International Union, United Automobile Workers of America, AFL

(Petitioner and affiliation, if any)

By (s) Eugene J. Martin

(Signature of representative or person filing petition)

Regional Representative

(Title, if any)

Address Litchfield, Ohio

(Street and number, city, zone, and State)

Medina 32037

(Telephone number)

Willfully False Statement On This Petition Can Be Punished By Fine And Imprisonment  
(U. S. Code, Title 18, Section 1001)



**TRANSCRIPT OF TESTIMONY****May 11, 1954****NATIONAL LABOR RELATIONS BOARD**

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In the Matter of:

Wooster Division of Borg-Warner Corp.

and

International Union, United Automobile,  
Aircraft and Agricultural Implement  
Workers of America (CIO)Case No.  
8-CA-830

---

Court Room, County Courthouse,  
Wooster, Ohio,  
Tuesday, May 11, 1954.

Pursuant to notice, the above-entitled matter come on  
for hearing at 10:00 o'clock a.m.

Before: Lloyd Buchanan, Trial Examiner.

**Appearances:**

Carroll L. Martin, Esq., National Labor Relations Board,  
Eighth Region, Chester-Ninth Building, Cleveland,  
Ohio, appearing on behalf of the General Counsel.

James C. Davis, Esq., of Squire, Sanders & Dempsey,  
1857 Union Commerce Building, Cleveland, Ohio, ap-  
pearing on behalf of Wooster Division of Borg-  
Warner Corp., the Respondent.

Lowell Goerlich, Esq., for the International Union,  
United Automobile, Aircraft and Agricultural Im-

*Proceedings*

plement Workers of America (CIO), 300 Walker Bldg., 734 15th St., N.W., Washington, D. C.

Herbert Pappin, International Representative UAW-CIO, 2082 East 4th St., Cleveland 15, Ohio.

James Simone, International Representative, UAW-CIO 2082 East 4th St., Cleveland, Ohio.

\* \* \* \* \*

## 4

## P R O C E E D I N G S

\* \* \* \* \*

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Mr. Martin: At this time I would like to amend the complaint by the addition to Paragraph 10 of the following language:

"Said strike was prolonged because of the unfair labor practices of respondent set forth in paragraph 9-A through

## 12

E, Paragraph 14-A through D."

Mr. Davis: Will it be in order at this time, if the Examiner please, that Mr. Martin advised us some time ago that he proposed to make this amendment, and we have no objection to his so doing, but we would ask leave as a result of his amendment to amend Paragraph 10 of our answer to add the following sentence thereto:

"The respondent specifically denies that any employee ceased work or failed to report for work or remained away from work because of an unfair labor practice of respondent."

Mr. Martin: Did you rule on the amendment to the complaint and the answer?

Trial Examiner: I take it there is no objection to either proposed amendment. Is that correct, gentlemen?

Mr. Davis: That is correct.

**RESPONDENT'S EXHIBIT No. 29**

**COLEMAN CO. AND INDEPENDENT APPLIANCE  
WORKERS' UNION.**

There shall be no cessation of work due to strikes or lockouts until the Executive Council of the union and the management of the company have exhausted every reasonable possibility of amicable adjustment of the dispute, and no strike shall be called even then, either by the union or by any group of its members without the approval of such strike by a majority vote by secret ballot of all employees eligible for membership in the union.

---

**RESPONDENT'S EXHIBIT No. 30**

**CAMPBELL SOUP CO. AND PACKINGHOUSE  
WORKERS**

No strike will be called in connection with these negotiations (over wage reopening) unless a majority vote in a secret ballot election supervised by the New Jersey State Mediation Service to so strike.

*Proceedings*

Mr. Martin: That is correct.

Trial Examiner: The motions to amend both the complaint and the answer, noted on the record, are granted.

. . . . .

## 13

Mr. Davis: It may be so stipulated.

Mr. Martin: May it further be stipulated that Butdorff was the president of Local Union No. 1239?

Mr. Davis: Yes, sir.

Mr. Martin: May it further be stipulated that Butdorff, Donaldson, Huffman, Snowbarger and Gore originally constituted

## 14

the local negotiating committee?

Mr. Davis: That is correct.

Mr. Martin: May it further be stipulated that Snoddy replaced Gore and was thereafter a member of the local negotiating committee of Local 1239?

Mr. Davis: That is right.

Mr. Martin: May it further be stipulated that Pappin was an international representative of the UAW-CIO?

Mr. Davis: Yes, sir.

Mr. Martin: May it further be stipulated that Roback is and was an international representative of the UAW-CIO?

Mr. Davis: That is right.

Mr. Martin: May it further be stipulated that Mooney was an administrative assistant to Richard Gosser, vice-president, UAW-CIO?

Mr. Davis: Mr. Martin, is it not a fact that Mr. Gosser is not only a vice-president of the UAW-CIO, but at the times involved here was president of the so-called Borg-Warner Council of UAW-CIO?



*Proceedings*

Mr. Martin: Director.

Mr. Davis: Was it "Director?"

Mr. Martin: I will so stipulate. Richard Gosser was the Director of the Borg-Warner Council of the UAW-CIO.

Mr. Davis: Mr. Mooney was the administrative assistant to him in both capacities, I assume?

15

Mr. Martin: That is correct.

May it be further stipulated that Ullman was an international representative of the UAW-CIO?

. . . . .

Mr. Davis: We will stipulate that Mr. Ullman was a staff representative of the UAW-CIO, and the duties to which he was assigned were as director of publicity.

Mr. Martin: I will so stipulate.

May it be stipulated that Thomas was the Assistant Director, Borg-Warner Council of the UAW-CIO?

Mr. Davis: Yes.

Mr. Martin: May it be stipulated that O'Malley was Director of Region 2 of the UAW-CIO?

Mr. Davis: Yes.

Mr. Martin: And a member of the Executive Board of the UAW-CIO?

. . . . .

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Mr. Martin: At this time I will offer in evidence General Counsel Exhibit 3-A.

Mr. Davis: No objection.

Trial Examiner: General Counsel Exhibit No. 3-A, heretofore identified, is received in evidence.

. . . . .

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Mr. Martin: I will offer in evidence General Counsel Exhibit 3-B.

Mr. Davis: No objection.

Trial Examiner: General Counsel Exhibit 3-B, heretofore identified, will be received in evidence, without objection.

. . . . .

20

Mr. Martin: I would like to offer General Counsel Exhibit 3-C in evidence at this time.

Trial Examiner: Is there any objection to General Counsel Exhibit 3-C?

Mr. Davis: No objection.

Trial Examiner: It will be received in evidence.

. . . . .

Mr. Martin: At this time I will ask the Reporter to mark for identification General Counsel Exhibit No. 4, a document of some 29 pages, to which there is an addition of a four-page wage schedule, and may it be stipulated by and between the parties that General Counsel Exhibit 4 is a true and correct copy of the proposal of the union which was presented to the company on or about January 23, 1953? Is that correct?

Mr. Davis: That is correct.

. . . . .

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Trial Examiner: Is General Counsel Exhibit 4 now being offered?

Mr. Martin: That is right.

Mr. Davis: No objection.

Trial Examiner: General Counsel Exhibit 4 is received in evidence.

. . . . .

*Proceedings*

Mr. Martin: I will ask the Reporter to mark for identification as General Counsel Exhibit 5-C a document of

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some 25 pages, and may it be stipulated by and between the parties that this is a true and correct copy of the first company proposal and that it was given or sent to the union along with General Counsel Exhibit 5-A and 5-B?

Mr. Davis: It may be so stipulated.

. . . . .

Mr. Martin: I would like to offer General Counsel Exhibit 5-A, B and C into evidence.

Mr. Davis: No objection.

Trial Examiner: General Counsel Exhibits 5-A, B and C may be received in evidence.

. . . . .

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Mr. Martin: May it be stipulated by and between the parties that General Counsel Exhibit No. 7 was a proposal for settlement of the economic issues, given by the company to the union at the meeting of March 11, 1953?

Mr. Davis: It may be.

. . . . .

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Trial Examiner: Are you also offering General Counsel Exhibit No. 7 in evidence?

Mr. Martin: Also General Counsel Exhibit No. 7.

Trial Examiner: General Counsel Exhibit No. 7, as identified, will be received in evidence.

. . . . .

Mr. Martin: May it be stipulated by and between the parties that General Counsel Exhibit No. 8 is a true and correct copy of the Settlement Proposal of the company with respect to the non-economic items, and that it was

*Proceedings*

given to the union on March 12, 1953?

Mr. Davis: It may be so stipulated.

Mr. Martin: I will offer General Counsel Exhibit No. 8 in evidence.

Mr. Davis: No objection.

Trial Examiner: General Counsel Exhibit No. 8 is received in evidence.

. . . . .

29

Mr. Martin: At this time I will ask the Reporter to mark for identification as General Counsel Exhibit No. 9 a document consisting of three pages, merely with the comment that this was the counter-proposal of the union on three-19-53. We will not proceed any further with this, and it will depend upon whether we can agree on it, and if not we will have further testimony on this document. I am identifying it now.

. . . . .

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Mr. Martin: May it be stipulated by and between the parties that General Counsel Exhibit No. 12-A is a true and correct copy of the Memorandum of Settlement entered into?

Mr. Davis: May we hold that just for checking, for the same reason?

Mr. Martin: That is all right.

Mr. Davis: Subject to check, we stipulate.

. . . . .

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Mr. Martin: May it be stipulated that General Counsel Exhibit No. 12-B is a true and correct copy of Exhibit No. 1, which was attached to and made a part of the Memorandum of Settlement, General Counsel Exhibit 12-A?



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Mr. Davis: With the same understanding, subject to check, we so stipulate.

Mr. Martin: As General Counsel Exhibit No. 12-C, may it be stipulated that that is a document of two pages, headed at the top "Exhibit 2", and that it is a true and correct copy of Exhibit 2, which was attached to and made a part of General Counsel Exhibits 12-A and 12-B?

Mr. Davis: Subject to verification, it may be so stipulated.

. . . . .

Mr. Martin: I will ask the Reporter to mark for identification General Counsel Exhibit No. 12-D a document

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consisting of three pages, which has as its heading "Exhibit No. 3", and which was also a part of Exhibits 12-A, B and C.

. . . . .

Mr. Martin: May it be stipulated that this is a true and correct copy of Exhibit No. 3 of the Settlement Agreement?

Mr. Davis: Subject to the same reservation, to permit us to check it?

. . . . .

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Mr. Martin: I will ask the Reporter to mark for identification as General Counsel Exhibit No. 13 a document of 40 pages entitled "Agreement between the Wooster Division of Borg-Warner Corporation and Local Union No. 1239 of United Automobile, Aircraft, and Agricultural Implement Workers of America."

. . . . .

Mr. Martin: May it be stipulated by and between the parties that this is a true and correct copy of the docu-

*Proceedings*

ment which it purports to be, and that it was signed on May 5, 1953?

Mr. Davis: It may be so stipulated.

Mr. Martin: I might point out again that it is set forth in the complaint, and we are arguing that the execution of this agreement constituted a refusal to bargain.

I will offer General Counsel Exhibit No. 13 in evidence.

Mr. Davis: No objection.

Trial Examiner: General Counsel Exhibit No. 13, as identified, is received in evidence.

. . . . .

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Mr. Davis: It was hardly that way, Mr. Martin. I could not quite agree to that statement of fact. This was, as I understand it, a settlement made in court, under threat of the issuance of an injunction because of violations of law through mass picketing, conducted not only by UAW-CIO members, whose only interest was in membership in Local 1239, but there was active partnership and leadership in the mass and illegal picketing by International representatives of the same union.

. . . . .

Mr. Martin: I will go into that.

The only purpose for which I am offering it is to show at least in one instance the company had no reluctance, and was anxious to enter into an agreement with both the International and the Local, as separate parties.

Mr. Davis: The fact of the matter is that the company was

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not only willing but anxious that those international representatives of the UAW-CIO agree to abide by the law, and as long as they personally and in their behalf as inter-

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national representatives were continuing to violate the law, we thought that they ought to sign the contract.

There is no question about signing it, and there is no question but what, when they violated the contract, the court issued the injunction.

Mr. Martin: That is the only relevance of the document, to show during the course of this collective bargaining, and with respect to this particular matter, the company and the parties did execute a document in which both the International and its local were listed separately, as separate parties, and signed as separate parties. They were parties to the over-all agreement.

. . . . .

Mr. Davis: That is perfectly agreeable to me. I understand the purpose of the offer, and my position, of course, is that this said agreement was entered into in a completely different background and contents upon a collective bargaining contract.

. . . . .

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Mr. Martin: And may it be stipulated by and between the parties that this is a true copy of the advertisement in the Wooster Daily Record of March 31, 1953, and that it was inserted by the Respondent Company?

Mr. Davis: It may be so stipulated.

Mr. Martin: . . . . .

I will offer General Counsel Exhibit No. 15.

Mr. Davis: No objection.

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Trial Examiner: The document is received as General Counsel Exhibit No. 15.

. . . . .

Mr. Martin: I will ask the Reporter to mark for iden-

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tification as General Counsel Exhibit No. 16 a one-page advertisement from the Wooster Daily Record of Wednesday, April 1, 1953, and ask if counsel for the company will stipulate that this is a true and correct copy of the advertisement that appeared in the Wooster Daily Record on Wednesday, April 1, 1953, and that it was inserted and paid for by the company?

Mr. Davis: It may be so stipulated.

. . . . .

Mr. Martin: I will offer General Counsel Exhibit No. 16.

Mr. Davis: No objection.

Trial Examiner: It is received in evidence as General Counsel Exhibit No. 16.

. . . . .

Mr. Martin: At this time I will ask the Reporter to mark for identification as General Counsel Exhibit No. 17 a copy of an advertisement from the Wooster Daily Record, Thursday, April 2, 1953, and ask if counsel will stipulate that this is

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a true copy of the advertisement that was inserted and paid for by the company in the Wooster Daily Record on April 2, 1953?

Mr. Davis: It will be so stipulated.

. . . . .

Mr. Martin: I will offer General Counsel Exhibit No. 17 in evidence.

Mr. Davis: No objection.

Trial Examiner: General Counsel Exhibit No. 17 will be received in evidence.

. . . . .



*Proceedings*

Mr. Martin: At this time I will ask the Reporter to mark for identification as General Counsel Exhibit No. 18 an ad from the Wooster Daily Record, Friday, April 3, 1953, and ask if counsel will stipulate that this is a true and correct copy of an advertisement that appeared in the Wooster Daily Record on April 3, 1953 and that it was inserted and paid for by the company?

Mr. Davis: We so stipulate.

. . . . .

Mr. Martin: I will offer General Counsel Exhibit No. 18 in evidence.

45

Mr. Davis: No objection.

Trial Examiner: The document is received in evidence as General Counsel Exhibit No. 18.

. . . . .

Mr. Martin: At this time I will ask the Reporter to mark for identification as General Counsel Exhibit No. 19 a copy of an advertisement from the Wooster Daily Record of Saturday, April 4, 1953, and ask if Respondent's counsel will stipulate that this is a true and correct copy of an advertisement that was inserted and paid for by the company in the Wooster Daily Record of April 4, 1953.

Mr. Davis: That is agreeable.

. . . . .

Mr. Martin: I will offer General Counsel Exhibit No. 19 in evidence.

Mr. Davis: No objection.

Trial Examiner: The document will be received as General Counsel Exhibit No. 19.

. . . . .

Mr. Martin: At this time I will ask the Reporter to mark for identification as General Counsel Exhibit No. 20

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a copy of an advertisement from the Wooster Daily Record of Wednesday,

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April 8, 1953, and may it be stipulated by and between the parties that General Counsel Exhibit No. 20 is a true and correct copy of an ad that was inserted in the Wooster Daily Record on April 8, 1953 by the company and paid for by them?

Mr. Davis: It may be so stipulated.

. . . . .

Mr. Martin: I offer General Counsel Exhibit No. 20 in evidence.

Mr. Davis: No objection.

Trial Examiner: The document marked General Counsel Exhibit No. 20 may be received in evidence.

. . . . .

Mr. Martin: I ask the Reporter to mark for identification as General Counsel Exhibit No. 21 a copy of an advertisement from the Wooster Daily Record of Friday, April 10, 1953.

. . . . .

Mr. Martin: May it be stipulated that this ad was inserted in the Wooster Daily Record on April 10, 1953 by the company and paid for by the company?

Mr. Davis: It may.

Mr. Martin: Offer General Counsel Exhibit No. 21 in evidence.

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Mr. Davis: No objection.

Trial Examiner: The document marked General Counsel Exhibit No. 21 will be received in evidence.

. . . . .

Mr. Martin: At this time I will ask the Reporter to

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mark for identification as General Counsel Exhibit No. 22 a copy of a newspaper ad from the Wooster Daily Record of Monday, April 13, 1953, and in identifying this I note there are several red check marks on this that were inserted inadvertently apparently by someone whose identity I don't know, and that those red check marks should be entirely disregarded. They are not considered part of the offer.

Mr. Davis: It may be so stipulated.

. . . . .

Mr. Martin: Will counsel stipulate that this is a true and correct copy of the ad inserted in the Wooster Daily Record of Monday, April 13, 1953, by the company and paid for by the company?

Mr. Davis: We will.

Mr. Martin: I offer General Counsel Exhibit No. 22 in evidence.

Mr. Davis: No objection.

Trial Examiner: General Counsel Exhibit No. 22 is

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received in evidence.

. . . . .

Mr. Martin: At this time I will ask the Reporter to mark for identification as General Counsel Exhibit No. 23 a copy of an ad in the Wooster Daily Record of Wednesday, April 15, 1953, and also wish to point out that on this document there is a check mark which should be disregarded, and I will ask counsel if it may be stipulated that this is a true and correct copy of an advertisement inserted in the Wooster Daily Record on April 15, 1953 by the company and paid for by the company?

Mr. Davis: We so agree.

. . . . .

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Mr. Martin: I offer General Counsel Exhibit No. 23 in evidence.

Mr. Davis: No objection.

Trial Examiner: The document is received as General Counsel Exhibit No. 23.

. . . . .

Mr. Martin: At this time I will ask the Reporter to mark for identification as General Counsel Exhibit No. 24 a copy of a newspaper ad in the Wooster Daily Record of Friday, April 17, 1953.

. . . . .

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Mr. Martin: I wish to point out that the exhibit as identified does contain some check marks and also a stamp of an NLRB receipt, both of which, the check marks and the receipt should be disregarded as not being part of the exhibit, and ask if the company counsel will stipulate that this is a true and correct copy of the ad that appeared in the Wooster Daily Record on April 17, 1953 and that it was inserted in the paper by the company and paid for by them?

Mr. Davis: We will do that.

Mr. Martin: I offer General Counsel Exhibit No. 24 in evidence.

Mr. Davis: No objection.

Trial Examiner: The document marked General Counsel Exhibit No. 24 will be received in evidence.

. . . . .

Mr. Martin: At this time I will ask the Reporter to mark for identification as General Counsel Exhibit No. 25 an ad from the Wooster Daily Record of Monday, April 20, 1953, and ask if counsel for the company will stipulate that this is a true and correct copy of an ad which ap-



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appeared in the Wooster Daily Record of April 20, 1953, and was inserted by the company and paid for by them?

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Mr. Davis: We so stipulate.

• • • • •

Mr. Martin: I offer General Counsel Exhibit No. 25 in evidence.

Trial Examiner: Any objection?

Mr. Davis: No objection.

Trial Examiner: The document will be received as General Counsel Exhibit No. 25.

• • • • •

Mr. Martin: At this time I will ask the Reporter to mark for identification as General Counsel Exhibit No. 26 a copy of an ad from the Wooster Daily Record of Wednesday, April 22, 1953; and ask if counsel will stipulate that this is a true and correct copy of an ad which appeared in the Wooster Daily Record on April 22, 1953, and that it was inserted by the company and paid for by them?

Mr. Davis: Yes, we so stipulate.

• • • • •

Mr. Martin: I offer as General Counsel Exhibit No. 26 the document just identified.

Mr. Davis: No objection.

Trial Examiner: General Counsel Exhibit No. 26 will be

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received in evidence.

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Mr. Martin: At this time I will ask the Reporter to mark

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for identification as General Counsel Exhibit No. 28 a letter of March 11, 1953, and may it be stipulated by and between the parties that this letter was mailed to all employees in the bargaining unit and that there was attached thereto the economic proposals of the company which have been received in evidence as General Counsel Exhibit No. 7?

Mr. Davis: It may be so stipulated.

\* \* \* \* \*

Mr. Martin: I will offer General Counsel Exhibit No. 28 in evidence.

Mr. Davis: No objection.

Trial Examiner: General Counsel Exhibit No. 28 will be received in evidence.

\* \* \* \* \*

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Mr. Martin: May it be stipulated by and between the parties that J. H. Graham was a foreman at the time of the dispute, and that General Counsel Exhibit No. 32 was prepared by the company and distributed to Mr. Graham and other foremen of the company, with instructions to send it out to the employees in their particular departments, and that the various foremen did send General Counsel Exhibit No. 32 to the various employees in the bargaining unit?

Mr. Davis: It is so agreed.

Mr. Martin: I will offer General Counsel Exhibit No. 32 in evidence.

Mr. Davis: No objection.

Trial Examiner: General Counsel Exhibit No. 32 is received.

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Mr. Martin: May it be stipulated by and between the

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parties that General Counsel Exhibit No. 33, and similar letters to that, were sent to all employes in the bargaining unit on April 15, 1953 and I believe by registered mail?

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Mr. Davis: I don't know about the registered mail.

(Conferring with associate.) We will agree that not similar letters but identical letters were sent.

Mr. Martin: Yes, identical letters were sent to all employes in the bargaining unit, on the same date, by registered mail.

Mr. Davis: That is correct.

Mr. Martin: I will offer General Counsel Exhibit No. 33 in evidence.

Mr. Davis: No objection.

Trial Examiner: General Counsel Exhibit No. 33 is received.

\* \* \* \* \*

Mr. Martin: At this time I will ask the Reporter to mark for identification as General Counsel Exhibit No. 34 a letter dated April 22, 1953, signed by Mr. Blythe.

\* \* \* \* \*

Mr. Martin: I will ask if counsel will stipulate that identical letters were sent to all employes in the bargaining unit on April 22, 1953, who had not come in to work by that time?

Mr. Davis: We will agree that they were sent to all individuals who were in the bargaining unit, who had not

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returned to work at that time.

Mr. Martin: All individuals in the bargaining unit and who were on the company pay roll prior to the strike and who had not returned to work by this date?

Mr. Davis: That is correct.

Mr. Martin: I will offer General Counsel Exhibit *NP* 34 in evidence.

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Mr. Davis: No objection.

Trial Examiner: General Counsel Exhibit No. 34 is received in evidence.

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HARRY ELMER BLYTHE, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

\* \* \* \* \*

Direct Examination

Q. (By Mr. Martin) Mr. Blythe, what is your connection with the Wooster Division of Borg-Warner Corporation?

A. I am the present and general manager and chief executive.

Q. Are you responsible for the complete operations of the Wooster Division?

A. I am.

Q. And who makes the policy with respect to, say, labor relations?

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A. I do.

\* \* \* \* \*

Q. You did not personally participate in the negotiations, did you?

A. I did not.

Q. Now, calling your attention to paragraph 3 of what I believe you might call the preamble, the section covering the

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parties to the agreement, you are familiar with that section?



*Testimony of Harry Elmer Blythe*

A. I am.

Q. Did the company, to your knowledge, at any time during the negotiations change its position with respect to the parties to the agreement?

A. No, I don't think they changed their position. We tried to clarify our position, as I recall, more specifically.

Q. Did you select a group to negotiate for the Wooster Division of Borg-Warner?

A. Yes, sir, I did.

Q. And that group consisted of Mr. Adams, counsel, and Mr. Seymour, Mr. Winters and Mr. Barker; is that correct?

A. That is correct.

Q. Did you give them any instructions as to whether or not they could in any way change or modify that third paragraph as to the parties to the agreement?

A. We had various conferences as the negotiations went on, and I modified whatever I thought was trying to accomplish the thing which was best for the people working there as well as for the company.

Q. Was it not the position of the company, to your knowledge, and your negotiators, that the contract should at all times be with the local?

A. The position of the company was at all times the agreement would be with the local, yes, sir.

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Q. And you were aware that the certification issued by the National Labor Relations Board named the International as the certified bargaining agent, were you not?

A. I was, but I was also aware that there were a number of contracts which had been signed by the UAW-CIO with the same kind of clause, and as the manager of this plant I felt that was for the best interest of all concerned.

Q. Now, I call your attention to the paragraph and the

*Testimony of Harry Elmer Blythe*

section dealing with responsibilities of the company and the union, beginning on page 6 of General Counsel Exhibit 5-C, and particularly with respect to Section 5.4. Would you look at that, please, and see if you are familiar with that?

A. Yes, sir.

Q. That in general provided, did it not, that before the employees would strike, that all the employees in the bargaining unit should be given an opportunity to vote by secret impartially supervised written ballot whether to accept or reject the Company's last offer or any subsequent offers; is that correct?

A. That is correct.

Q. Now, to your knowledge, the negotiators that you selected at all times during the negotiations insisted on that provision, did they not?

A. I think so, yes, sir. On that clause at no time did we refuse to negotiate. Our position was to try to work out some-

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thing, as I said before, which was best for the employees as well as best for the company. We were faced with the situation, as I recall, where the man negotiating had negotiated three straight strikes and we were trying to work out something to put all the cards on the table and get those things settled whereby we wouldn't face the same kind of a situation, because without a doubt those came about through some misunderstandings. We never refused, as far as I know, to negotiate that clause, but as I recall we never had an opportunity. It was always pushed aside. We never discussed that clause in negotiation. It was always pushed aside.

Q. You were not present at the negotiations, though?

A. Sir?

*Testimony of Harry Elmer Blythe*

Q. You were not actually present at the negotiations?

A. I was not present at the negotiations. I am saying—

Q. What is your understanding?

A. That is right.

Q. To your knowledge, though, did you ever instruct or advise the negotiators to offer any modification of the strike vote provision?

A. We never had an opportunity to, because they never discussed it.

. . . . .

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The Witness: Yes, sir, I am familiar with it.

Q. (By Mr. Martin) To your knowledge did you ever at any time instruct or advise the negotiators to offer any modification of that provision in the negotiations with the union?

A. To my knowledge, I did not.

Q. All right, now, look at Section 5.7.

A. Yes.

Q. That is the section which generally provides that the issues as to whether or not the contract was to be terminated shall be submitted to a vote, secret ballot, of all the employees in the bargaining unit; is that not correct?

A. That is correct.

Q. Did you ever authorize or instruct the negotiators to offer any modification of that provision?

A. To my knowledge, I did not.

. . . . .

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Q. (By Mr. Martin) I will correct my question and say this: General Counsel Exhibit 11 has been identified as a proposal submitted by the company negotiators at the April 17 meeting, and I show you this document and wish that you would look at it with particular reference, now,

*Testimony of Harry Elmer Blythe*

to the Section 5.9 and ask if you are familiar with that proposal?

A. Yes, I am familiar with that. I must say there were a lot of modifications on this thing. I just don't recall going through each and every detail of what the modifications were, and on those I didn't have to give my approval on every one of

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them. I depended upon counsel. I am no lawyer. I depended upon counsel, and I do recall this one.

Q. You recall that. In other words, that was a modification of the original clause, in that this provision provided that not only if the contract was to be terminated but in the event it was to be amended or modified there should be a secret ballot; is that not correct?

A. That's what it says.

Q. Were you familiar with that and discussed that with your negotiators before it was presented?

A. I don't think I can answer that definitely one way or another. I don't recall specifically whether I was or whether I wasn't.

Q. Well, I want to call your attention to Sections 5.6 and also 5.8 and ask you if those provisions are not identical to the provisions that were originally in 5-C, and you may look at 5-C, if you wish.

Mr. Davis: Don't the figures speak for themselves, Mr. Martin?

Mr. Martin: I think they do, but this is preliminary to another question.

Mr. Davis: Did you give him 5-C?

Mr. Martin: Yes.

Trial Examiner: Calling the witness' attention to what in General Counsel Exhibit 11?



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Mr. Martin: To the fact that 5.6 in General Counsel Exhibit 11 is identical to Section 5.4 in General Counsel Exhibit 5-C.

The Witness: Well, there is one change here.

Q. (By Mr. Martin) What is that?

A. This is in General Counsel Exhibit 11.

Trial Examiner: Reading from which paragraph?

The Witness: I am reading from Paragraph 5.6. "To assist both parties to carry out this intent in good faith, it is agreed that the procedure referred to in Section 5.5a, in the case of a matter on which the impartial arbitrator does not have jurisdiction and authority to rule, shall consist of four basic steps to be taken with respect to each dispute in order to permit the greatest opportunity for satisfactory settlement."

In 5.4 of Exhibit 5-C it says: "To assist both parties to carry out this intent in good faith it is agreed that it is essential that three basic steps be taken with respect to each dispute in order to permit the greatest opportunity for satisfactory settlement."

Q. (By Mr. Martin) Have you finished your answer?

A. Yes.

Q. The provision for the strike ballot, though, the circumstances and the method were identical in both general counsel Exhibit 11 and in General Counsel Exhibit 5-C?

A. Yes, it would seem so.

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Q. Now, you stated previously a few moments ago, I think, it was your understanding you didn't have any opportunity to offer any amendment with respect to the strike ballot question; is that right?

A. That is correct.

Q. You were familiar with what was going on from day

*Testimony of Harry Elmer Blythe*

to day, weren't you?

A. As I recollect that, every time that question came up it was pushed aside, that Mr. Pappin took the stand he wouldn't talk about it.

\* \* \* \* \*

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Q. I am asking you if at any time you suggested to your negotiators to make an agreement with the local and the international, to your knowledge?

A. To my knowledge, they did not.

Q. That was what they were asking for?

A. That is correct.

Q. Did your negotiators discuss that with you?

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A. That was the policy right from the beginning.

Trial Examiner: The question is: Did they discuss it with you?

Q. (By Mr. Martin) Did they discuss the proposal of the union with you, that the contract be with the Local and the International?

A. I don't recall that they discussed that point or whether they discussed the strike vote, because that was the basis on which we started out.

\* \* \* \* \*

Q. (By Mr. Martin) What was the basis on which you started out?

A. That those two things were things which we felt this contract should contain, for the benefit of the employes and for good relationships between the employes and management.

Q. And you never changed your position personally with respect to those two points, did you?

A. No, sir.

*Testimony of Harry Elmer Blythe*

Q. Didn't you know that there was considerable discussion during all these meetings with respect to the parties to the agreement? Were you not advised of that?

A. No, I don't recall any discussion whatsoever on the strike vote. The question of the agreement with the Local and the

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International, yes, there was some discussion on that.

Q. Were you not advised by the negotiating committee that the union took the position that the International was certified, and that it should be a party to the agreement?

A. That was up to our legal counsel, whether we had to do that or whether we did not have to do that. Our legal advice was that that was not a necessary adjunct to signing the contract, because we had other cases where the CIO signed contracts where the International was not a party.

Q. I am merely asking you, was there any discussion, and did the negotiators so advise you?

A. There was discussion.

Q. There was discussion of that matter?

A. Yes, sir.

Q. And the union took the position that the International was certified and it was entitled to be a party to the contract? Do you recall that?

A. I recall that, and we took the position, based on previous contracts, contracts that they had signed, that we did not have to.

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Q. Were you not advised by the negotiators that the International Union representatives had taken the position that the strike vote involved all members of the bargaining union, and participation was a violation of the union constitution? Were you advised he took that position?

*Testimony of Harry Elmer Blythe*

A. I recall no such thing. All I recall Mr. Pappin saying is they would not discuss it.

Q. Were you advised that Mr. Pappin stated it was a violation of the law, and it cited the Allis-Chalmers case to the negotiators? Do you recall that?

A. I don't recall that. I was aware of the Allis-Chalmers case, and that is not the law as yet, as I understand it.

Q. I will ask you to look at General Counsel Exhibit No. 31.

A. Yes, sir.

Q. Under Item 2 mentioned there, you made reference to the position of the union on the strike vote question, did you not?

A. Right.

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Q. Where did you get that information, that the International Union policy is opposed to a secret strike ballot on company premises?

A. I continued repeating that they would not discuss it, and they were opposed to it. That was repeated over and over again.

Q. Didn't the negotiators tell you the Union gave a reason for opposing it?

A. They gave me no reason.

Q. So far as you know, they never gave any reason?

A. So far as I know they never gave any reason, but just washed it out of the picture and would not discuss it.

\* \* \* \* \*

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Q. Calling your attention to General Counsel Exhibit No. 17, which is the April 2nd ad, you did set forth certain unsettled items, did you not?

A. Yes, sir.



*Testimony of Harry Elmer Blythe*

Q. Where did you get your information as to that matter?

A. From our bargaining committee.

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Q. And at that time you knew that the Union's position still was that they were against having an agreement with the Local only, and also against a secret strike vote in which all employes in the unit would participate? You were so advised?

A. I do not know at what stage of the instructions that was clearly brought out. I couldn't say whether it was on that date or before or after.

Q. You did say that in this ad, did you not?

A. Yes, sir.

Trial Examiner: Is that General Counsel Exhibit No. 19?

Mr. Martin: No. 17.

Q. (By Mr. Martin) The information you got, which was inserted in there, was from your negotiating committee?

A. That is correct.

Q. I call your attention to General Counsel Exhibit No. 22. Will you examine that, please?

Mr. Davis: Which one is it?

Mr. Martin: It is April 13th.

Q. (By Mr. Martin) I want to call your attention to the statement with reference to the settlement of the disputes. You do have there what purports to be a quote from the negotiating sessions. Is not that correct?

A. That is right.

Q. Of February 9, 1953, is that right?

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A. Yes, sir.

Q. Mr. Pappin said: "I won't discuss it further,"

*Testimony of Harry Elmer Blythe*

with respect to that?

A. I don't know whether Mr. Pappin said it or who.

Q. You say here the Union representative.

A. Yes, sir.

Q. Where did you get that information from?

A. That came from the negotiating committee, which no doubt came from their recollection of the minutes which you have got. You could probably find it there in some of those minutes.

Q. And the other statement reads: "We will not accept this under any conditions." Where did that come from?

A. The same thing.

Q. I ask you to look at page 4 of General Counsel Exhibit No. 37.

Mr. Davis: Date?

Mr. Martin: Dated February 9th, Paragraph 5.

The Witness: Yes, sir.

Q. (By Mr. Martin) Is there a statement in there the same as you have quoted in your ad: "We will not accept this under any conditions."?

A. That is right.

. . . . .

Q. (By Mr. Martin) Now, during the course of the strike, somewhere around April 1st; the company did arrange for bus transportation to the plant for the employees. Is that correct?

A. Yes, we arranged for bus transportation. Exactly how, I do not recall.

Q. You instructed the foreman to send out letters to the employees in their particular departments, that there would be a bus to transport them to the plant?

A. I did not give those instructions.

*Testimony of Harry Elmer Blythe*

Q. Who gave those instructions?

A. I do not know.

Q. You knew of them, did you not?

A. I knew of them, yes, sir.

Q. You approved them?

A. I did.

Q. And that transportation was provided free to the employees, to come into work, was it not?

A. That is correct.

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**TRANSCRIPT OF TESTIMONY****May 12, 1954**

\* \* \* \* \*

Mr. Davis: Mr. Martin, before you go ahead, the Respondent has no objection to the admission of General Counsel Exhibits 9, 10, 11 and 12-A, B, C and D. I think those are the only ones that we reserved on yesterday, for the purpose of checking. I believe they were offered, as a matter of fact, but not admitted, pending our check. For the record we withdraw our objection.

Trial Examiner: The exhibits identified as General Counsel Exhibits 9 through 12-D are received in evidence.

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**Direct Examination (Cont'd)**

Q. (By Mr. Martin) I believe you testified yesterday, Mr. Blythe, that it was the advice from the negotiators that the union would not negotiate on the strike ballot proposal; they just said they wouldn't accept it. Is that correct?

A. My advice to them originally started just before the negotiations. After I appointed the committee—and I testified to the members of the committee yesterday—we

discussed the general situation and I tried to lay down to them certain principles with regard to this. I had been heading up different production organizations and been working with unions for 35 years, and I think my work was pretty successful.

Q. I didn't hear you.

A. I have been working with unions for 35 years in production, and I think pretty successfully, and I had some ideas as to what I thought would be the principles involved



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in this session which we were going into. My idea back of this thing, which I tried to outline to these fellows, was something which would bring about friendly relations and would not get us into a hassle of grievances, and so forth and so forth on the program, the main end being that everybody would profit by it, the company and the employees.

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Q. You did insert the ad which we discussed yesterday, which contained the positions of both the company and the union with respect to that situation?

A. I did.

Q. And you got that information from some place?

A. I got that information from the committee.

Q. You sent out the same sort of information in a number of letters to the employees, did you not?

A. I testified to that yesterday.

Q. That is right. You also had notices and ads on the

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radio in Wooster, to the same effect as your newspaper ads, did you not?

A. Yes, sir.

Q. And that was true throughout or at least after the strike started?

A. Yes, I think it was after the strike started.

\* \* \* \* \*

Q. Do you recall occasions—and this is prior to March

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20th while the people were still at work in the plant—going into the plant and talking with the people about the International representatives that were at the negotiations?

A. I recall two cases where Mr. Pappin's name came in.

Q. Would you tell us about those?

*Testimony of Harry Elmer Blythe*

A. I am trying to refresh my memory on that a bit. One case was a talk with Homer Butdorff, which I think happened two or three weeks after the negotiations had started, and I asked Homer: "How are things going along?" And, as I recall it, he said "Not very good."

And I said: "What is the trouble?"

He said "Well, we don't seem to be getting any place."

I said: "Now is no time to be discouraged on that, the early part, and this is the first contract, and it is more difficult than later contracts would be because every single thing in the first contract has to be defined."

We discussed along that line, and I said: "Homer, I'm trying to the best of my ability, as the head of this company, to be fair, and I have tried to outline to you and to everybody else the position of the company. From what I can learn of Mr. Pappin, he is a fair negotiator, and I think with both parties taking that attitude, we'll come out of it all right."

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Q. Do you recall specifically talking to some of the men in the plant, while they were working, and while the negotiations were on, and saying to them, or words to this effect: "That if they would get rid of Mr. Pappin, they would get a settlement here of the contract difficulties in short order."?

A. I remember no such a statement.

Q. Would you deny that you ever made such a statement or any similar statement to that?

A. I would deny that I made that statement, so far as my recollection goes.

Q. And that would apply also to any similar language, to the effect that if they would get rid of Mr. Pappin and the International they would get a settlement of the con-

*Testimony of Harry Elmer Blythe*

tract difficulties in short order?

A. As I said, I recall neither that nor similar language.

\* \* \* \* \*

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Q. Is it not true, My. Blythe, that there were two principle things that you felt you should get in this contract, as you testified yesterday, and one was that the contract should be with the local, and the other was that there should be a strike vote prior to any strike in which all employes in the bargaining unit should participate?

A. Those were the two principles which I laid down to them when we had our discussions before entering into negotiation, and as I testified yesterday, we considered the Local definitely as part of the International. We considered it as the union

The very fact that Mr. Pappin conducted the meetings and

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all these other fellows, would indicate that that was true.

Now, on the strike vote, that was the principle which, as the head of this plant, I thought was important for the employes of the company and I have always felt that was an undemocratic thing, it was against the Bill of Rights, and I thought we had a perfect right, based upon legal counsel advice, to test that point, but as far as I am concerned that one never came to a point of where there was any great discussion on it. It was never brought back to me.

Q. As far as you knew, your own negotiators never gave you any great deal of discussion concerning the issue of the parties to the agreement; is that correct?

A. That is correct. If that had come up, they had the authority, as I said before, to move on a lot of things. Had

*Testimony of Harry Elmer Blythe*

that come up with a lot of discussion, I feel quite sure it would be brought back to me for discussion.

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## Cross-examination

\* \* \* \* \*

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Q. (By Mr. Davis) Mr. Blythe, at the time or about the time you came to the Wooster Division of Borg-Warner Corporation, did you learn that strikes were in progress or had just recently been in progress in several of the other divisions of the Borg-Warner Corporation?

\* \* \* \* \*

A. Yes, sir.

Q. (By Mr. Davis) And what was the situation as you understand it in that regard?

\* \* \* \* \*

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A. The first day I talked to Mr. Ingersoll.

Q. Who was Mr. Ingersoll?

A. Mr. Ingersoll was president of Borg-Warner Corporation.

Q. Yes?

A. His phone was constantly ringing from customers, etc., and he turned around to me and said: "There are eleven of our companies that are on strike."

Q. Now, does the Borg-Warner Corporation have a division in Cleveland known as the Pesco Products Division?

A. Yes, sir.

Q. Do you know what union has been representing the employees of the Pesco Division for the last several years?

A. International Automobile Workers, CIO.

Q. And you know what the strike experience at Pesco had been before you came to Wooster?

\* \* \* \* \*



*Testimony of Harry Elmer Blythe*

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The Witness: Yes, sir.

Q. (By Mr. Davis) What was it?

A. They had had three strikes and had just finished a strike shortly before I came.

Q. Is this plant at Wooster an old or a new plant?

A. Brand new.

Q. What is the product or what has been the product of the Wooster Division?

A. The product has been hydraulic and booster pumps, furnished for the Air Force and Navy.

Q. Does the Pesco-Products Division of Borg-Warner make a similar product?

A. Yes, sir.

. . . . .

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Trial Examiner: It is my impression—and the General Counsel will correct me if I am wrong—that General Counsel points to the position taken by the Company, as alleged in the complaint, as indicating bad faith. General Counsel does not claim that the position was taken in bad faith, and with the intent in assuming that position to

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violate the Act.

Is that your position, Mr. Martin?

Mr. Martin: I think my position would be better expressed by saying that it is our position that insistence upon these particular clauses to a point of impasse amounts to bad faith.

Mr. Davis: Without regard to the intent or good or bad faith of Respondent in fact?

Mr. Martin: That is right.

Mr. Davis: Then you take the position, if I understand you rightly, that the insistence, if there was such, on the

*Testimony of Harry Elmer Blythe*

two paragraphs in the contract, to which you averted were unfair—

Mr. Martin: The second paragraph.

Mr. Davis (Continuing): —they were unfair per se and just by virtue of itself without regard to intent or purpose, a violation of the Act.

Mr. Martin: That is right.

. . . . .

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Q. Exhibit 3-B indicates that there were 95 eligible voters. Was that the size of the bargaining unit at that time?

A. I think that figure is correct, sir.

Q. In that election, according to General Counsel Exhibit 3-B, the UAW-CIO received 48 votes, the UAW-AFL received 45 votes, and one man did not vote. Is that substantially as you

recall it?

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A. That is, sir.

. . . . .

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Q. Is it not a fact that both unions in their struggle for the representation rights told the people in your plant, whichever union was selected that they would have a local and have the right to make their own local contract with the company?

A. That is my recollection.

. . . . .

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Q. (By Mr. Davis) As a matter of fact, hand bills were distributed among your people by the Pesco local representatives of the UAW-CIO, as well as by the International people themselves; isn't that right?

*Testimony of Harry Elmer Blythe*

A. Yes, sir.

. . . . .

Q. (By Mr. Davis) I hand you what the Reporter has marked as Respondent's Exhibit No. 2, and ask you if you recognize it as one of the dodgers or bulletins which was distributed to your people?

A. Yes, sir, I recognize it as such.

Mr. Davis: May it be agreed, Mr. Martin, that Joseph W. Greulich at the time was president, and the other persons whose names appear on Respondent's Exhibit No. 2 were the officers indicated in the Pesco local at that time?

. . . . .

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Q. (By Mr. Davis) Now, Mr. Blythe, I hand you what the Reporter has marked for identification as General Counsel Exhibits 5-A and 5-B, which has been admitted in evidence, being a letter written by Mr. N. E. Seymour, Works Manager of Wooster Division, and addressed to the bargaining committee of local Union 1239, UAW-CIO, dated February 9, 1953, and I ask you if you were familiar with that letter and its contents at the time it was dispatched?

A. Yes, sir, I was familiar with the letter and contents.

. . . . .

Q. Now you say, Mr. Blythe, that this was a new plant at Wooster. Is that right?

A. That is correct.

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Q. And it is a fact, is it not, that the negotiations involved here were negotiations leading to the first union contract in this plant?

A. That is correct.

. . . . .

Q. The proposal which was made by the company, as

*Testimony of Harry Elmer Blythe*

you understood it, would have permitted a strike on items not subject to arbitration at any time when more than 50 per cent of the people in the unit decided on or wanted to strike over the company's

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wishes?

A. That is correct.

Q. You did not propose to completely deprive the union or the people of their right to strike during the term of the contract, did you?

A. I certainly did not.

Q. In the instructions which you gave to your bargaining committee, did you ever tell them that they were not to discuss items of the contract and negotiate with international representatives as well as local representatives of the UAW-CIO?

A. I did not.

• • • • •

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Q. (By Mr. Davis) Mr. Martin asked you several questions about what was reported to you by your negotiating committee. It is a fact, isn't it, that from the reports of your negotiating committee you knew that up until shortly before the actual signing of the contract both international representatives and local representatives of the union attended all the bargaining negotiating sessions?

A. I didn't see them personally at all times but that was my impression, and based upon reports made to me.

Q. And you never gave any instructions to your bargaining committee that they should refuse to deal with international representatives as well as local representatives, did you?

A. I did not.



*Testimony of Harry Elmer Blythe*

Q. Did you ever give your bargaining committee any instructions that they should not sign a contract, if the union wanted both international representatives and local representatives to approve it?

A. I did not.

Q. I take it from what you have said, Mr. Blythe, that it

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was your understanding that the union itself had represented to the local representatives that they could sign their own contract, and you preferred it that way from your own judgment?

\* \* \* \* \*

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A. Yes, sir.

\* \* \* \* \*

Q. (By Mr. Davis) Mr. Blythe, you testified in answer to questions by Mr. Martin that it was your practice to go through your plant and talk with your employees. Is that just an occasional thing with you or do you do that frequently?

A. I do that every morning that I am in the shop.

Q. And you did that during the period of the negotiations?

A. I have done it every day as far as I can recall, since I have been in Wooster, since I came here on November 1st.

Q. And that is the practice I think you said that you had followed a good many years in plants you were responsible for?

A. That is correct.

Q. Now, I hand you what has been identified in the record as General Counsel Exhibit No. 27 and which was

*Testimony of Harry Elmer Blythe*

admitted in evidence yesterday, a copy of a letter dated February 18, 1953, which you sent to the employees of the Wooster Division, and calling your attention to the first paragraph thereof which

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reads:

"In my daily trips through the plant many of the employees have asked about the contract negotiations between the company and the union bargaining committees. I have tried to answer your questions frankly, without moving the negotiations from the bargaining table to the shops."

What did you mean by that statement?

. . . . .

A. I had instructed the bargaining committee with a general outline in their proceedings and placed full confidence in them regarding bargaining, negotiating on this contract, and I was conscious of the fact that I did not want to put myself in the position of doing the job I had assigned to them, thereby taking the bargaining table onto the shop floor.

Q. Now, the times that you talked with these individuals in the plant, did you at any time while their committee was negotiating with your committee, attempting to negotiate directly with the people?

A. I did not.

Q. Did you at any time either threaten anybody in your plant or promise them any reward dependent upon the outcome of the negotiations or who negotiated for them or anything of that kind?

A. I did not.

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Q. If I understand you correctly, yesterday you testi-

*Testimony of Harry Elmer Blythe*

fied that before these negotiations started you outlined broad objectives which in principle you would like to see accomplished as the result of the bargaining on this contract. That is right, isn't it?

A. That is correct.

Q. You left to the bargaining committee the right to negotiate, make changes, consider counter-proposals and that sort of thing in an effort to reach a contract, did you not?

A. That is correct.

. . . . .

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Q. Now, the fact is, is it not, that with respect to the no-strike or secret ballot clause, you told your committee that it was your purpose and desire to try to avoid work stoppages during the life of the contract unless they had the support of a majority of the people in the unit? I think you suggested that earlier to me.

A. That is correct. We were manufacturing pumps for defense and one of the main objectives was to keep that continuously flowing out of the door.

. . . . .

Q. Now, after the strike took place was there some difficulty

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in the way of mass picketing and the like so that your employees who desired to work could not get in the plant?

A. Yes, sir.

. . . . .

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HARRY ELMER BLYTHE . . . . .

. . . . .

Q. But you know, do you not, that as a fact company

*Testimony of Harry Elmer Blythe*

representatives did regularly meet with both local and international representatives of the union to discuss grievances and other matters arising under the contract?

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A. Yes, sir, I do know that as a fact.

Q. And that continued, did it not, up until substantially the time that you wrote this letter of January 20, 1954? It continued until that time and as a matter of fact your company handled grievances and other matters with the representatives of the UAW-CIO up until the time the contract expired on March 20, 1954; is that correct?

A. That is correct.

. . . . .

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Q. Now, at the time the contract, General Counsel Exhibit 13, was entered into, was there a division of the Borg-Warner Corporation, a separate division, located in Cleveland, called the Cleveland Commutator Division of Borg-Warner Corporation?

A. Yes, sir.

Q. What was the business of the Cleveland Commutator Division?

A. Making commutators for motors, electric motors.

Q. Was that division, during the life of the contract, General Counsel Exhibit 13, abolished and its work and personnel transferred to the Wooster Division of the Borg-Warner Corporation?

A. The Company was not abolished. The work, machinery, and some of the personnel was transferred down here.

Q. Did the Cleveland Commutator Division, while in Cleveland, have a union contract?

A. They did not.



*Testimony of Harry Elmer Blythe*

Q. Although you may not have personally taken part in the negotiations, do you know whether or not the Wooster Division and the representatives of the UAW-CIO negotiated about whether or not the employees of the Cleveland Commutator Division should be included in the bargaining unit at the Wooster Division?

A. They did negotiate.

Q. And, as a matter of fact, did not the Company—  
Trial Examiner: When you say Cleveland Commutator

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Division should be included, you mean those employees that came to Wooster?

Mr. Davis: Those employees that came to Wooster. Maybe that should be clarified for the record.

. . . . .

Q. (By Mr. Davis) When the Cleveland Commutator Division moved to Wooster some of the employees also moved to Wooster and continued to work here; isn't that correct?

A. That is correct.

Q. Those who did not move to Wooster left the employ of the Cleveland Commutator Division?

A. That is correct.

Q. And after the Cleveland Commutator Division moved to Wooster you hired additional employees here for the Cleveland Commutator Division?

A. That is correct.

Q. So that the question of negotiation between the Company and the Union was as to whether or not and on what basis the employees who had moved to Wooster with the Cleveland Commutator Division and the employees who had been hired in Wooster should

*Testimony of Harry Elmer Blythe*

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be folded into the bargaining unit represented by the Union at the Wooster Division?

A. That is correct.

Q. And as a matter of fact, agreement was reached between the Company and the Union to include those people in the Wooster Division bargaining unit represented by the UAW-CIO and the basis on which they would be included?

A. That is correct.

Q. And that was about when, if you recall?

A. Well, we started moving down from Cleveland about last September, and I am fuzzy—

Q. It would be some time after that.

A. I would say it would be two or three months after that that the final matter was settled to move them into the bargaining unit of the Wooster Division.

Trial Examiner: Say approximately November or December, 1953?

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Cross-examination

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Q. (By Mr. Martin) Mr. Blythe, you testified concerning some meetings which you were informed of concerning the transfer of the Cleveland Commutator Division of Borg-Warner. Is that correct?

A. That is correct.

Q. Can you tell us now the approximate number of employees involved in that, and who actually came down to Wooster from Cleveland?

• • • • •

*Testimony of Harry Elmer Blythe*

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A. Approximately ten to fifteen.

Q. Then, as you testified, you did hire some new employees, and I believe you set it up as a department eventually, did you not?

A. Yes, sir. We kept the name and corporation as a separate entity. It still is the Cleveland Commutator Corporation.

Q. I think you testified that you did have some negotiations, you understand, although you were not certain, and that there were some negotiations in which a representative of the International and the Local participated with reference to that transfer?

A. Yes, sir.

Trial Examiner: Am I correct in my understanding that with some new employees and those who came from Cleveland, you set up a new department, but all of these employees were included in the bargaining unit?

The Witness: For clarification of the record, the company was moved down here. The company was kept and is today a separate corporation located in the same building.

Trial Examiner: But the employees are in the bargaining unit, collective bargaining unit?

The Witness: They are today, yes, sir.

. . . . .

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Q. You testified, in answer to some questions by Mr. Davis, referring to General Counsel Exhibit No. 14, that this agreement was signed and entered into as a result of court proceedings arising out of some injunction action taken because of the picketing. Is that a correct summary?

A. This is an agreement which really forestalled an injunction.

*Testimony of Harry Elmer Blythe*

Q. You had injunction proceedings or a temporary restraining order?

A. We did not have a temporary restraining order.

Q. You did not?

A. We did not. This was the first meeting, and it was thought, for the best of all parties concerned, it would be better to have an interim agreement, and this was it.

Q. In this agreement, though, you did, as shown by the first part of that agreement, recognize as one of the parties to that agreement the International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO? And as another party, Local 1239 thereof? Is that correct?

A. That is correct. This had nothing whatever to do with a contract but it was an agreement, since both parties were on the picket line, that we would all abide by the agreement.

Mr. Martin: At this time I again wish to offer in evidence General Counsel Exhibit No. 14.

Mr. Davis: I object to it on the ground that it is

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irrelevant to any issues in this controversy.

Trial Examiner: The objection is overruled and the document is received as General Counsel Exhibit No. 14.

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Q. I am going to ask you to look at this, without offering or identifying it in evidence. I am going to show you what has been obtained from the Common Pleas Court of Wayne County, Ohio, as the application for temporary injunction in Case 38035, with reference to the Wooster Division of Borg-Warner,



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Wooster, Ohio, plaintiff, vs. International Union of Automobile, Aircraft, and Agricultural Implement Workers of America (UAW-CIO) and listed underneath that is Local Union No. 1239 et al, and then following that are various names.

This document is referred to in General Counsel Exhibit No. 14, which has been received, and I want to call your attention to the following language, which I will read to you, and you may read it as I read it:

"The International Union of Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO) Local No. 1239 is a voluntary association known as a labor union. Part of the employees of the plaintiff corporation are members of Local 1239, a voluntary association known as a local labor union affiliated with The International Union of Automobile, Aircraft, and Agricultural Implement Workers of America (UAW-CIO). The defendant, Russell Roback, is an international representative of The International Union of Automobile, Aircraft, and Agricultural Implement Workers of America, (UAW-CIO). The defendant, Homer Butdorff, claims to be president of said Local 1239."

Then I call your attention to the following page of that document, being the verification, and which reads:

"State of Ohio:      SS:  
Wayne County:

"Harry E. Blythe, being first duly sworn, deposes

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and says that he is president and general manager of the Wooster Division of Borg-Warner, a corporation, duly authorized in the premises; that he has read the foregoing

*Testimony of Harry Elmer Blythe*

petition and that the statements and allegations contained therein are true."

Is that your signature?

A. Yes, sir, that is my signature.

Q. It also says: "Sworn to before me and subscribed in my presence this 23rd day of March.

"Signed: Henry B. Critchfield."

Did you swear to those statements as being correct?

A. That is correct.

\* \* \* \* \*

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Q. I have just one other question. You may have answered this yesterday, but I want to be sure. Didn't you testify yesterday that you did not personally know or have taken up with you by your own committee the modification of Paragraph 5.7 in the company's later proposals, which provided not only for termination but provided with respect to the question of modification? The question involved was whether or not the contract was to be amended, modified or terminated, is what I have reference to.

A. I think I testified that that was not taken up with me, and if I did not, I will now so testify.

Q. I was not quite clear. You would say that that was a matter which you left with your negotiators, as to how they should do that?

A. That is correct.

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HERBERT J. PAPPIN, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

\* \* \* \* \*

*Testimony of Herbert J. Pappin*

## Direct Examination

Q. (By Mr. Martin) By whom are you employed, Mr. Pappin?

A. I am employed by the International Union, United Automobile, Aircraft & Agricultural Implement Workers of America.

. . . . .

Q. In what capacity?

A. As an International Staff Member.

. . . . .

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Q. (By Mr. Martin) Now, Mr. Pappin, subsequent to the certification issued by the Board in connection with the Wooster Division of the Borg-Warner Corporation, were you assigned to any work in Wooster in connection with the

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negotiations?

A. Yes, I was.

Q. And did you come down to Wooster?

A. Yes, I came down to Wooster.

Q. And did you at various times participate in negotiations?

A. Yes, I did.

. . . . .

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Q. I will hand you what has been received in evidence as General Counsel Exhibit No. 4, and it has been stipulated that this is a copy of the Union's proposal, which was submitted to the company on or about January 23rd. Did you have that proposal with you at that time?

A. Yes, we had this proposal, and we presented it to the

*Testimony of Herbert J. Pappin*

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company at that time, and we told Mr. Adams, who was present at that meeting, I am sure—we told the bargaining committee for the company that this was our proposal, of which one part of a non-economic proposal was approved by the membership of the local union, but we informed them there was a second report, non-economic, which had not been approved by the membership, and the economic proposal which had been drafted by the committee had not been approved by the membership, but that this thing would be approved, that is, the second part, non-economic, and the full economic would be presented before a membership meeting on the 24th, to be ratified by the membership of the local union, and at which time, after ratification, we would inform the company of the results of that meeting.

\* \* \* \* \*

Q. (By Mr. Martin) A local meeting thereafter?

A. Yes, I did. I attended a local union meeting on the 24th and listened to the discussion.

Q. What happened at that meeting on the 24th?

A. They approved the second part of the non-economic proposal, and they approved the economic part of the proposal, with some slight modifications.

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Q. Now it has been stipulated that the next meeting was on

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February 9, at which time you were present, together with Butdorff, Gore, Donaldson, Huffman and Snowbarger, local bargaining committee, together with Messrs. Adams, Seymour, Winters and Barker. Do you recall that meeting of February 9th?



*Testimony of Herbert J. Pappin*

A. Yes.

Q. At that meeting did you receive any proposal in writing from the company?

A. Yes, we received their non-economic proposal.

Q. It has been stipulated between the parties that General Counsel Exhibit 5-C is the proposal prepared by the company and presented at that meeting. Do you recall that?

A. Yes, I recall this.

Q. Directing your attention particularly to Paragraph 3 of what might be described as the preamble, just the section covering the parties to the agreement, did you have any discussion concerning that section at the February 9th meeting?

A. Yes, I told the company in relation to Paragraph 3 that this violated the certification of the Board, and I further told them that it was in violation of our constitution to have this third paragraph and that it would be with the local union, affiliated with the International.

\* \* \* \* \*

Q. I want to call your attention to General Counsel Exhibit 5-C, to the sections concerning what is headed as Section 5 Responsibilities of the Company and the Union, and refer you particularly to Sections 5.4 through 5.7, and ask you whether or not you had any discussion with the company representatives at the February 9th meeting concerning those proposals?

First, just answer that yes or no.

A. Yes.

Q. Tell us what you can recall of what you said or anyone else said with reference to those sections.

A. I said in respect to this that we wouldn't accept it under any circumstances, and I recall that at this meet-

*Testimony of Herbert J. Pappin*

ing I turned to the members of the committee and asked them individually if they agreed with my statement, and they each individually answered in the affirmative on that particular question.

Q. Did you give the company representatives any reasons why you would not accept those sections under any conditions?

A. No, I didn't. I can't recall of any at this particular meeting.

Q. Is that all you can now recall of any discussions which were had with respect to the two sections about which I asked

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you, at the February 9th meeting?

A. I recall that we discussed union security.

Q. I am only asking about these two sections.

A. I can't recall any more on those two sections.

. . . . .

Q. You may keep those proposals before you.

On February 10th and February 11th, 1953, it has been stipulated that further meetings were conducted. Is that in

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accordance with your recollection and with your notes?

A. Yes, that is correct.

Q. To the best of your recollection, was there any discussion at either of those two meetings, February 10th or February 11th, concerning the clause covering the parties to the agreement or the various section 5.4 through 5.7, concerning the strike ballot proposals of the company and its various ramifications?

A. No, I don't recall any discussion on those two points.

Q. Subsequent to the February 11th meeting do you recall, or does the calendar indicate that you attended any

*Testimony of Herbert J. Pappin*

local meetings, any meetings of the local?

A. Yes, there was a meeting held on Sunday, February 15th, at 2:00 p.m., with respect to which a membership meeting had been called for the purpose of a report and for the purpose of determining some action to be taken as a result of the company's proposal.

Q. Did you speak at that meeting, if you recall?

A. Yes.

Q. Tell us what you can recall briefly of what you stated?

A. I reported to the membership that although we had passed out an economic proposal, that they had not as yet passed one out, and ours was presented on January 23rd. I further reported the company's proposal in relation to the proposal which we submitted, which was adopted by the membership, and

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I told the company—

Q. Do you mean you told the membership?

A. I told the membership with respect to parties to the agreement that they asked that the agreement be with the local union, affiliated with the International, contrary to the certification of the Board, which stated that the agreement should be with the International UAW-CIO. I told them that I thought it was their purpose to divide the International from the Local Union.

I referred further to the secret ballot election which was proposed by the company and I told the membership that in all my years of experience with the International Union, that this was the first proposal that I had received from any company that non-union people would be allowed to vote in an election before we could go on strike. I told them that we were so very far apart in the proposal that I could see no other alternative but for the local union to

*Testimony of Herbert J. Pappin*

give the executive board some authority with respect to action, and give the committee some authority to really negotiate.

Q. Was any action taken at that meeting by the membership of the local, if you can recall?

A. Yes, there was a motion passed unanimously that they give the executive board authority at such time as they seen fit, and under the procedures of our constitution to call a strike vote, when they deemed it necessary.

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Q. It has been stipulated and agreed here that there was a meeting on February 16, 1953, and you were present at that meeting with representatives of the company. Is that correct?

A. Yes, I was present at that meeting.

Q. At this meeting did you tell the company about the meeting of the local?

A. Yes, I told the company that the membership had passed a vote unanimously to give the executive board authority to conduct a strike vote at such time as they deemed it necessary.

Q. Now, going back to the general counsel exhibit which you have before you, which is the company proposal, Exhibit 5-C, were there any discussion on the third paragraph of the preamble concerning the parties to the agreement at the February 16th meeting, that you can recall?

A. Yes, I told the company that this violated the certification of the Board, of the National Labor Relations Board, and I read to the company—I had a copy with me of the certification, which I had received, and I read that copy to the company at this meeting, and told them that the language showed that the certified bargaining rights were to the International UAW-CIO.

*Testimony of Herbert J. Pappin*

Q. Did Mr. Adams, or any of the other members of the company negotiating committee, make any reply or say anything with reference to that clause in your argument?

A. I believe Mr. Adams stated, or told me that there was a

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leaflet passed out at the plant gates which guaranteed autonomy to the local union, and that the agreement would be with the local union, or something to that effect.

\* \* \* \* \*

Q. Do you recall anything else with reference to that clause, any statement by any of the people present?

A. I am not sure whether it was this meeting, but I think it was said at this meeting that the agreement should be with the local union and not the International.

Q. Do you recall whether or not at that meeting there was any reference to the Pesco agreement?

A. I believe that there was. I am not sure whether it was at that meeting or the meeting on the 18th, but either one of those two meetings. There was a reference by Mr. Adams, who stated that the first Pesco agreement was with the local union, and I told Mr. Adams that the first Pesco agreement language was the International Local 363, UAW-CIO.

That is all I can recall with respect to that particular date. It might have been at a later date. I'm not sure.

Q. Is that all you can recall now of the discussions at that meeting with reference to the parties to the agreement clause?

A. Yes, that is all.

Q. Can you recall whether or not you had any discussion at the meeting of February 16th with reference to the strike ballot clauses, Sections 5.4 through 5.7?

A. No, I can't recall of any discussion on that issue at



*Testimony of Herbert J. Pappin*

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that time.

\* \* \* \* \*

Q. At the February 18th meeting, can you recall whether or not there was any discussion with the representatives of the company concerning the clauses covering the parties to the agreement?

A. Yes, there was discussion on that.

Q. Tell us what you can recall of what was said by yourself or any one else present at that meeting.

A. As I stated before, at another meeting, at the previous meeting, which I think was the 16th, which was the next pre-

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ceding meeting, we did discuss the parties to the agreement. We also discussed this union counter-proposal, and I have designated in my notes here of that meeting that we agreed to the first and second paragraphs of the company's preamble. The third paragraph which I dated in my notes 2-18-53, was disagreed to. The reason that I told them about this was that I went into some detail about the parties to the agreement, that Mr. Adams had been the head counsel of the Pesco Products negotiation, and he was fully aware, and as a member of the company negotiating committee at Pesco, that we had in that agreement, in August or September, or around about that time, come into agreement with the Pesco Company, where they agreed to add to and modify the preceding agreement by adding the words "and its local union."

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Q. At either of those three meetings which I have mentioned, can you recall whether or not there was any

*Testimony of Herbert J. Pappin*

discussion, the meetings on February 20, 23 or 25, that there was any discussion, which you can recall, concerning the parties to the agreement or the company's proposal, Sections 5.4 through 5.7, concerning the strike ballot?

A. You said the 23rd and the 25th?

Q. February 20, 23 and 25. At any of those meetings was there any discussion on those two clauses, that you can recall?

A. No, I can't recall of any discussion on those particular dates.

. . . . .

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Q. You say about this time you did ask someone to have Mr. Blythe come in?

A. Yes, I have asked the question on many occasions.

Q. What was the reply that you got, and from whom?

A. They said that they were the bargaining committee and that Mr. Blythe was on the top strategy committee with the comptroller of the company, and I believe they named Ed Whalley, Mr. Barker and Mr. Seymour, and they were representatives of the company policy with respect to collective bargaining.

\* \* \* \* \*

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Q. Now, subsequent to February 25th did you attend any meeting of the local in Wooster?

A. Yes, I attended a meeting on February 27.

Q. Do you recall what happened at that meeting?

A. On the meeting of the 27th I addressed the membership.

Q. Tell us, as best you can recall, in your own words, what you said to the membership?

A. Well, I told the membership that we had asked the

*Testimony of Herbert J. Pappin*

company at one of the previous meetings—I am not exactly sure but it may have been the meeting of the 23rd—if there they had their economic proposal, that we were going to bring it before the membership, and they said they were not ready for the economic proposal yet. I told the membership about that discussion. I also told them that the company had not changed their position with respect to the parties to the agreement, and further told them that they still maintained their position on the question of union security; that they said that their position with respect to union security was made up on the basis of responsibility, and they had not moved off of that position.

I stated further that on the matter of granting a union shop that the non-union employes would vote on it before we would have a right to determine our position, and in my opinion that was a violation of the constitution. I told them that up to this point there was no evidence whatsoever that

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the company would get off of this position, but that if they did a contract could be settled in a very short time.

Q. Did you discuss the company's proposal with respect to this matter?

A. I told them about the revocable check-off and the secret ballot on company time, and that it would allow the non-union people in the company to influence an election before we would have a right to use economic action.

Q. Was any action taken by the membership of the local at the February 27th meeting, if you can recall?

A. Yes, there was a motion made to conduct a strike vote, and in the process of that vote, the democratically elected membership committee, which attended the meeting, and the election committee, conducted a secret ballot

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election, in which they voted 86 to 20 for strike action. That strike action was qualified; that from henceforth on Mr. Steve Eddy of the Department of Mediation and Conciliation would attend all future meetings, and that we would proceed to negotiate for two weeks, and at the end of such time we could report back to the membership the progress made in that period of time, and by a majority vote the membership would accept or reject it, and such rejection would be to go on strike.

Q. It has been stipulated that there was a meeting on March 4, 1953, at which time you were present, along with representatives of the local bargaining committee, the company.

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representatives, and Mr. Eddy. Is that your recollection?

A. That is correct.

. . . . .

Q. Can you recall what was said and by whom with reference to the parties to the agreement at that time?

A. I told Mr. Adams on this question that we could not accept an agreement with only the local union as a party to the agreement.

Q. Can you recall anything else?

A. I do not think there was any other discussion with respect to that point.

Q. Can you recall whether or not Mr. Adams made any statement with respect to their position on that clause at that meeting?

A. I am not sure whether he made the statement, but he did repeatedly, many times, that he thought it should be with the local union and, further, that he made reference again to our first agreement in the Pesco plant, which was with the local union, which I denied, so far as any intent of the language of the Pesco agreement was concerned.

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Q. Can you recall whether or not there was any discussion or mention made of clauses 5.4 through 5.7 with reference to the strike ballot question at that meeting?

A. No, I cannot.

Q. You cannot recall anything?

A. No, sir.

Q. It has been stipulated and agreed to here that further meetings were held on March 6, 9 and 11, and that you were present at all those meetings, together with the local bargaining committee and the company representatives. Do you recall that those meetings were held on March 6, 9 and 11?

A. Yes, I do recall that those meetings were held, but I cannot remember of any discussion during those meetings with respect to parties to the agreement or union security or the secret ballot election.

. . . . .

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Q. \* \* \* Do you recall any discussion that was had at the meeting of March 12th concerning the clause of the parties to the agreement?

A. I can't recall of any discussion about this, this question at this meeting.

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Q. Do you recall whether there was any discussion at that meeting concerning the strike ballot clauses or not?

A. No, I cannot.

. . . . .

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A. Yes, I had. I had a discussion. Mr. Adams called me on Friday the 13th.

Q. Was that on the telephone or how was that?



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A. Yes, it was a telephone conversation.

Q. Tell us what Mr. Adams said and what you said.

. . . . .

A. (Continuing) Mr. Adams stated that—I was talking to him—that he knew I was pretty hot and used some real strong language about Mr. Blythe at the adjournment of the meeting on the 12th, and he said that he had known me a long time and he had also discussed with other of the Company representatives and he found that I was very fair and he was very much surprised that I would use the language that I had used.

Well, I told him it was only a figure of speech, that I was very much perturbed by his activities, by Mr. Blythe's activity out in the plant, and if I was wrong about his activity—and there was an indication that maybe I could have been—that I would be willing to apologize about it, and I said: "I would like to ask you, Mr. Adams, one question, a couple of questions with relation to negotiations." I said:

A. . . . and I said: "I would like to ask you, Mr. Adams, one question, a couple of questions with relation to negotiations." I said:

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"Is Mr. Blythe and the Company still going to stand on their position that this agreement is going to be with the Local and that non-union employees are going to be allowed to vote?" And I can recall very vividly that Mr. Adams stated: "Now, Herb, I don't want to be misunderstood, the Company is very serious on these important points." And I told him then if that was the position, what I said previously still went.

Trial Examiner: What still went?

The Witness: The hard language I used on the 12th.

Q. (By Mr. Martin) During that time did you attend

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any further meeting of the local prior to the meeting with the Company on March 17th?

A. Yes. We had a local union meeting on March 15th.

Q. Do you recall where that took place?

A. It took place in Wooster.

Q. And do you recall what happened at that meeting of the local?

A. Well, I recall that on Friday the 13th that Mr. Roback and Mr. Jack Snowbarger was up to Cleveland at the regional office where we went over the Company's economic and non-economic proposal, and we drafted the differences of positions from what had been granted by the Pesco Division with respect to both economic and non-economic, and we covered each item of dispute as a comparison, and we drafted that up and had mimeographed copies made of our analyzation of the differences

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apart that we were at that time.

Mr. Martin: I will ask the reporter to mark for identification as General Counsel Exhibit No. 63 a document headed "Let's Compare the Record and you Decide."

(The document above referred to was marked for identification General Counsel's Exhibit No. 63.)

Q. (By Mr. Martin) I will hand you what has been marked for identification as General Counsel's Exhibit No. 63, and ask you to look at that and tell us what that is, if you know?

A. This is a proposal, this is the statistics we drafted up on Friday, of which Mr. Roback and Mr. Snowbarger took back with them to Wooster, and they informed me that they passed this out at the plant gates on Saturday the 14th, and it is a comparison of "Let's Compare the Record and you Decide." And I cover each individual

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issue in dispute.

Q. Did you have that document with you at the meeting on the 15th with the Local which you stated you attended?

A. Yes, I did.

Q. What, if anything, did you do with that document at the meeting of March 15th?

A. Well, that was an Executive Board meeting on the 15th of March, and we invited stewards to attend.

Q. Did you have that document with you at the Executive Board meeting?

A. Yes, I had this with the Executive Board.

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Q. What did you do with it at the Executive Board meeting?

A. Well, I went over—I didn't go over this in detail with the Executive Board except to hit certain highlights with the Executive Board.

Q. What parts of it do you recall you went over with the Executive Board?

A. I went over the parts of the agreement, and the Company insisted the non-union employees would vote before we had the right to strike, and we went over the question of wages and many other things in dispute.

Q. Did the Executive Board take any action? This was prior to the membership meeting, was it?

A. Yes, the Executive Board passed a motion including the stewards, passed a motion unanimously to turn down the Company's last proposal and give the bargaining committee the authority to conduct a strike on February 20th.

Q. Is that February or March 20th?

A. On March 20th, if a proper contract to their satisfaction was not concluded.

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Q. All right, now, how long after the Executive Board meeting was the membership meeting held, if you can recall? Did you note the time on your calendar?

A. I think it was 2:00 or 2:30, and I was just going to check that point on my calendar. No, I haven't the date, but I think it was 2:00 or 2:30 on March 15th.

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Q. Did you have this document, General Counsel's Exhibit 63, with you at the membership meeting?

A. Yes, I did.

Trial Examiner: The membership meeting was called after the Executive Board meeting; is that correct?

The Witness: Correct.

Q. (By Mr. Martin) And did you discuss or read any parts of that at the membership meeting?

A. I read over part of this to the membership committee and discussed each difference, and made a full report of this before the membership meeting.

Q. Did the membership take any action on any matter at that meeting of March 15th?

A. Yes, they had a secret ballot vote conducted by a democratically elected election committee, and they voted 83 to 51 to adopt the Executive Board and steward body's recommendations.

Q. And that recommendation was as you already testified?

A. That the plant strike on March 20th if a solution was not made to the over-all issues in collective bargaining.

Mr. Martin: I will offer General Counsel Exhibit 63.

Mr. Davis: No objection.

Trial Examiner: General Counsel Exhibit 63 is received in evidence.

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Q. At the March 17th meeting was there any discussion that you can recall concerning the Company proposals as to the parties to the agreement?

A. Yes, there was discussion by me, Mr. Adams and the other representatives of the Company.

Q. State as best you can recall what you said and what they said.

A. I told Mr. Adams that if that were the only issue in dispute that the Union would strike on that one issue on March 20th. I further told them we had the membership meeting and that the membership had determined that that was a very important issue and had given the Committee the authority to strike on that issue. I further told them that in my opinion it was a violation of the Board to require that non-union people be allowed to vote on whether or not our Union would have an economic action. And I know that I stressed those points about the economic action that we would take on that

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issue alone at that meeting.

Q. Do you recall anything that Mr. Adams or anybody else in the Company said with respect to their position on that strike clause?

A. Up to this meeting, as far as I can recollect—and I am sure they made some notes on it, but I cannot swear to it exactly—their answer was practically the same thing up to this point, that they thought the local union agreement should be in the name of the local union, because the handbills—and they referred again to the Pesco agreement. That is all I can generally remember that was emphasized in my mind. I am sure it was discussed at this meeting.

Q. I am talking about did Mr. Adams or did any



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representative of the Company at this meeting, as best you can recall, make any statement with reference to the Company position on the strike ballot clause, that is, the Sections 5.4 through 5.7, and the members of the bargaining unit voting on those questions?

A. No, I can't recall that at that meeting.

Q. Can you recall any discussion concerning the use of Company premises at that meeting for voting?

A. Oh, I recall, yes. I recall the discussion about using Company premises that I stated at that meeting.

Q. What did you say and what did the Company representatives say?

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A. I recall that I told the Company that election on Company property would allow the Company to interfere with the election by campaigning against the issues, and that we would like to have the question to discuss among ourselves, of our members, and certainly we didn't oppose anyone being a member of our Union. In fact, we were asking for a Union shop so they could all become members. And I am sure Mr. Adams made reference that we had that particular clause in some other agreement, and I am sure he was referring to the Allis Chalmers in West Allis, Wisconsin.

Q. Can you recall anything else now that was talked about with reference to these two particular clauses, or have you now exhausted your recollection?

A. Well, I recall nothing about these two particular clauses that I can recall.

\* \* \* \* \*

Trial Examiner: I am going back to that question. When Adams said there was such an agreement elsewhere—I didn't

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get that statement. Did he refer to an agreement which the Company had elsewhere?

A. No, he referred to an agreement in which the International went into agreement at Allis Chalmers in West Allis, with the Allis Chalmers Corporation.

\* \* \* \* \*

**TRANSCRIPT OF TESTIMONY****May 13, 1954**

\* \* \* \* \*

Q. Following the March 17th meeting, the next meeting was March 18th; is that correct?

A. That is correct.

Q. It has been stipulated that you and Mr. Roback were present at that meeting, along with the local bargaining committee. Is that correct?

A. That is correct.

Q. Can you recall whether or not at the March 18th meeting there was any discussion concerning either the parties to the agreement clause in the company's proposal or your proposal or the section in the company's proposal dealing with the strike ballot vote, and other sections concerning that same proposal as to approval by vote on the company's last offer or approval by vote of the proposal to terminate the contract?

A. No, there was no discussion at that meeting on those points.

Q. It has been stipulated that there was a meeting on March 19, 1953, at which time you were present with Mr. Roback and members of the local bargaining committee. Do you have a

recollection of that meeting?

\* \* \* \* \*

A. I asked the company, Mr. Adams, why he couldn't narrow the issues down to the same basis that we did before. Mr. Adams stated that their last proposal was an over-all

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package, and he said: "You, by that effort, are not making an over-all package proposal."

With that discussion, I asked for a recess, and the committee left the conference room, and we then went over all of the issues in dispute, and in the issues in dispute we thought that maybe we could make some effort on the parties to the agreement, and we would change our position with respect to the parties to the agreement; and we changed our position with respect to union security, and we then **also** discussed the secret ballot election from that proposal. We discussed it at some length. I do not believe we discussed it at great length.

Q. Did you make any further written proposal at that meeting on the 19th?

A. I believe that we made a written proposal which we gave to Mr. Eddy, to give to the company, but I am not sure whether we gave it or read from our proposal to the company, but I am sure they were pretty clearly identified, because we discussed them at some length, and the company went over our proposal.

Q. I will hand you what has been marked and received in evidence as General Counsel Exhibit No. 9, and it has been stipulated that this document was presented on March 19th by

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the Union to the Company, and I will ask you to examine that and see if it refreshes your recollection as to what you proposed at this meeting.

A. Yes, this is the proposal that we offered the company at the meeting on the 19th.

Q. And I also show you General Counsel Exhibit No. 10 which has been received in evidence and which the parties have stipulated the company presented at the March 19th meeting, and can you recall the circumstances of that pro-

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posal of the company?

A. Well, I remember that these proposals were submitted by the company at the meeting of the 19th.

Q. Did you discuss at this meeting your Item No. 1 on General Counsel Exhibit No. 9? And, on the parties to the agreement?

A. Well, we only discussed it to this extent: I told Mr. Adams that we were dropping the word "its" from our previous position which said: "And its local union," and the language now would be: "The agreement is between the company and the International Union UAW-CIO and Local 1239."

Q. Did Mr. Adams or anyone from the company make any reply to this as to whether or not they were willing to accept that language change you proposed with respect to the parties to the agreement?

A. Not specifically on the point.

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Q. Did they say anything about it?

A. No.

\* \* \* \* \*

Q. (By Mr. Martin) It is true, is it not, Mr. Pappin, that that proposal referred to the third paragraph of the preamble of the company's proposal on the parties to the agreement?

A. Yes.

Q. You were proposing this change in language?

A. Yes.

Q. Now, do you recall whether or not there was any discussion concerning the strike ballot proposal of the company, and did you make any proposal with respect to that?

A. We made a proposal. I can't find it here. I am sure we made some reference in this proposal to strikes.

Q. As to the no-strike clause?



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A. Yes.

Q. Is that Item No. 3 of General Counsel Exhibit No. 9?

A. That's right.

Q. That is the language that the no-strike clause—you proposed the no-strike clause as originally proposed by the union?

A. That is right. That is the language of the same no-strike agreement we had in the Pesco agreement. Mr. Adams was counsel for the company and there was no change whatsoever from that language and what we were proposing to this division of the Borg-Warner Corporation.

Q. Did you make any change in your position on the union shop at this meeting?

A. Yes, we then proposed a modified union shop and the irrevocable check-off. That language was also the language that was in the Pesco agreement, for which Mr. Adams was the counsel for that company during the negotiations.

Q. Did Mr. Adams or anyone from the company give you any answer to your proposal of the thirty points that you presented to them?

A. Yes, they said that this was no offer that would be worth considering on the basis as submitted. Mr. Adams said that.

Q. How was the meeting of March 19th concluded, if you can recall?

A. Well, we made this effort to narrow down the issues, as I just reported here. We submitted to the company the issues and they said that it was no offer that was satisfactory to them and that we should take the company's last proposal.

We told the company that the strike would take effect at

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7:00 o'clock the following morning and that we would be willing to meet with them at any time and at any place for the purpose of resolving the issues, and the company stated that "we want to inform you that we are going to operate the plant for anyone that wants to come to work if the strike takes effect at 7:00 a.m."

Q. Did the strike take place at 7:00 a.m. starting the morning of March 20, 1953?

A. Yes, it did.

Q. Now, it has been stipulated here that there was a negotiating meeting on March 31, 1953, and you were present. Is that the first meeting you know of subsequent to the beginning of the strike?

A. March 31, yes.

\* \* \* \* \*

Q. Now, do you recall how that meeting started out?

A. Well, the meeting started out when I went over the issues in dispute, and we discussed many of the things, but particularly with respect to the parties to the agreement and the secret ballot election. Of course, I listed all the points. I told Mr. Adams that with respect to these two points—

Q. What two points are you referring to?

A. That is parties to the agreement and the secret ballot election on company property, that these two points were fundamental to the settlement of the dispute, that I stated by the company's continued resistance on these two points that it was interpreted to me as a refusal to bargain. Well, there was Mr. Mooney that I know of came up with the discussion on the parties to the agreement at that time.

Q. What do you recall he said?

A. He said: "How come you want this agreement to be with the local union when it is certified in the name of

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the International Union?"

Q. Did anybody from the company reply to Mr. Mooney, as you recall?

A. Yes, Mr. Adams stated: "Well, you have had that in the first agreement at the Pesco local union," and I stated that it was in the Pesco local union, and I am stating this in

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effect, this discussion took place and he said "Why don't you propose that?"

Trial Examiner: I don't quite understand who said that.

The Witness: Mr. Adams.

Trial Examiner: You said it was in the basic local union?

The Witness: Mr. Adams stated he didn't see anything wrong with the local union because we had agreed to it in the Pesco local union agreement.

I explained to Mr. Adams that the Pesco was in the name of the International Local Union and his language was in the local union affiliated with the UAW-CIO, and Mr. Adams suggested that: "Why don't you propose that?" And I stated—

Trial Examiner: Propose what?

The Witness: Propose the Pesco language: I said: "I will give it my consideration."

Mr. Martin: May it be stipulated by and between the parties that the language in the Pesco agreement of 1947 concerning the parties to the agreement reads as follows:

"Agreement: This agreement entered into as of May 15, 1947 between Pesco Products Division, Borg-Warner Corporation, of Cleveland, Ohio, hereinafter referred to as the company, and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America,

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Local Union 363-CIO, hereinafter referred to as the union."

Mr. Davis: It may be so stipulated.

Q. (By Mr. Martin) Is that the language of the stipulation that I have just read to you that you understood you were talking about at this meeting?

A. Well, this is not the language of the present agreement, this is the language that Mr. Adams was always referring to.

Q. That's what I am asking you. Is that what you understood as the language Mr. Adams was referring to at this meeting of March 31?

A. Yes.

Trial Examiner: All right, Mr. Martin.

Q. (By Mr. Martin) Did you make any reply that you can recall to Mr. Adams' statement and suggestion regarding the language of that Pesco agreement?

A. Well, I said I would give it consideration. He said: "Why don't you propose it?"

Q. Did you propose it?

A. Not at that time.

Q. Do you recall whether or not Mr. Adams made any reply to Mr. Mooney when he asked him, as you testified to, as to why they asked for the contract to be between the local union and management?

A. Well, it was his reply that, when he said: "How come, we did it in the first Pesco agreement," and that is the

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result of this conversation.

Q. Do you recall anything that you said with respect to your proposal on the parties to the agreement? Did you take any position and make any statement at that meeting?

A. I did, I covered the two points, that the two points were fundamental and the company took the position that

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it would be interpreted to be as a refusal to bargain. \* \* \*

Q. Do you recall whether or not Mr. O'Malley took part in the discussion?

A. Yes, Mr. O'Malley stated at one part of the meeting, he said: "If the company thinks we are going to sign an agreement with the local union, they are wrong." He said he thought that the strike was precipitated by the company on this point.

\* \* \* \* \*

A. I did, I covered the two points, that the two points were fundamental and the company took the position that it would be interpreted to be as a refusal to bargain. And I can't recall, but there may have been other discussions that I stated at that meeting, but I can't at this time remember.

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Q. Can you recall anything else that was said by Mr. O'Malley or Mr. Mooney with respect to that?

A. I can only recall the conversation with Mr. O'Malley.

Q. What was that?

A. Mr. O'Malley stated that inasmuch as Mr. Blythe would not or did not come into this meeting that he believed that the company did not want to settle the dispute, and he saw no purpose of continuing negotiations further, that before he would negotiate further that the company should advise them on three points: 1, that they would make the International a party to the agreement, and, 2, would eliminate their position of allowing nine union employees to vote on strike action, and, 3, offer their position on sub-standard wages. He said: "The International Union will be up on the hill and they will be ready to come and meet when they are so advised," and that was the end of the meeting.

Q. Did Mr. Adams or anybody make any reply to Mr.



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O'Malley,

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that you can recall of?

A. I can't recall of any reply.

Q. Do you recall whether or not there was any reference by anyone from the company to the fact that they made a package offer?

A. Yes. I wouldn't want to say it was then, whether they made it then or after, but I think they did say that they had made a package offer of non-economic and economic, which they thought was a fair proposal, and the union should accept that offer.

Q. Is there anything else which you can recall which was said at that meeting, which you have not told us?

A. I can't recall.

Q. It has been stipulated that there was a meeting on April 17, 1953, at which time the local bargaining committee was present, together with yourself and Mr. Thomas. What was Mr. Thomas' position, if you recall?

A. He was the assistant director for the Borg-Warner Council.

Q. And the same representatives were there for the company, were they not?

A. That is right.

Q. And Mr. Eddy was also present?

A. Yes, sir.

Q. So far as your recollection is concerned, was that the first meeting subsequent to the March 31st meeting?

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A. Yes, it was.

Q. Can you recall what, if anything, happened at that meeting?

A. Well, we discussed parties to the agreement, and I told the company that I would not accept that under any

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circumstances.

Q. Would not accept what?

A. Their proposal.

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Q. Tell us what you can recall of the discussion which you stated you had concerning the parties to the agreement at this meeting?

A. I told Mr. Adams that we wouldn't accept their changes under any circumstances.

Q. Did you state what your position was concerning the parties to the agreement?

A. I didn't go into it at that time because I started out with that point, and I then went right directly next to the secret ballot.

Q. Was there any discussion concerning the clauses involved in the secret ballot?

A. I told the company that a secret ballot, in my opinion, was a violation of the law.

Q. Were you referring to the secret ballot proposal as made by them?

A. Yes. And it had been so ruled in a trial examiner's report in the Allis-Chalmers in Detroit.

Q. Did Mr. Adams make any reply or statement with reference to your statement concerning the Allis-Chalmers case?

A. Yes, he did.

Q. Tell us what you can recall of what he said.

A. He stated that he was surprised that I had stated that all issues in dispute should be resolved between the company and the union. He had been informed that a charge was filed against the company on these two points for refusing to bargain, and he stated that he thought that

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our position was groundless. He went on further to state that the company was interested in these two points; that they were important to the company and the employees, and he stated that the company's position had merit.

He further stated that on February 18, 1953, there was a House Bill introduced, which resolution was introduced by some Congressman, proposing that secret ballot elections be conducted by all employees in the bargaining unit before they would have a right to strike.

He further stated that—and he had an editorial clipping, and I think he made reference to this being suggested by some mediation department in some dispute in the G.E. or some I.U.E. plant, and he stated that all he had heard from me was that it was a violation of the constitution. He further stated that he had surveyed some contracts and had found that there were six of these agreements in the U.A.W. that were with Local Unions.

Q. Did you make any reply to that, that you can recall?

Mr. Davis: Did you say UAW?

The Witness: Yes, sir.

I told Mr. Adams that he well knew that we always stated

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that the parties to the agreement was a violation of the certification, and to only make reference to us, always stating that it was a violation of the constitution, was wrong.

Trial Examiner: Would you read that answer, please, Mr. Reporter?

(Answer read.)

Q. (By Mr. Martin) By that do you mean that their proposal to the parties to the agreement was a violation?

A. I was answering his statement. He said at that meeting that all he had ever heard the committee say was it was a violation of the constitution. I told Mr. Adams

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had stated that as one reason, and the other one that I had stated was a violation of the certification, and I had stated that I believed it was a violation of the law on the secret ballot, and had not only said in the discussion that it was a violation of the constitution.

Q. By that you were referring to the company's proposal on those subjects, is that correct?

A. That is right.

I again at that meeting stated that it was a violation of the Allis Chalmers Toledo case, and so upheld up to that time, and Mr. Adams stated that he had studied that case, and that the issues in that dispute were not the same as the issues in this dispute; that he had understood that the question involved in that case was because the company was requiring that the

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local union officers be elected on company property.

That is all that I can recall with respect to that discussion.

Q. During the course of the meeting, did the company present any further written proposal to you?

A. Yes, they did.

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Q. Did you have any further discussions about your acceptance or non-acceptance of the company's proposal, as changed?

Trial Examiner: Was this at a later meeting?

Mr. Martin: This was later at the same meeting. He testified that the parties separated and went into individual rooms.

Trial Examiner: All right.

Mr. Martin: And then they received this.

Trial Examiner: I recall it.

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Q. (By Mr. Martin) You state that you met together again?

A. We met together again.

Q. Did you state anything to the company with respect as to whether or not you would accept or not accept their proposal as changed?

A. We went over this proposal in the meeting with the company, and I made comments on the complete proposal.

Q. Tell us what was said.

A. With respect to Section 1, the first three steps in grievance procedure, where the dispute involves a grievance, I said we could accept that, and we believed that was all right.

Q. What are you referring to?

A. 5.6 of their new proposal.

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Q. 5.6 of General Counsel Exhibit No. 11?

A. That is right.

On No. 2, which read: "A clear definition of the issue or issues officially made known to all parties in the bargaining unit," I told Mr. Adams that if we could work out some mutual way of defining the issues, that we would be glad, that the members of our union would be informed of these issues, because we wanted them to clearly understand them so that they knew what they were voting on.

I stated on proposal No. 3, which says that there will be "a reasonable period of good faith bargaining on the issues as defined, after such issues had been made known to all employees in the bargaining unit," that we were in favor of that because we did not believe that an economic action should be taken in haste, while both parties may be made at one another temporarily.

I stated, further, that we were opposed to their point 4, because the company had proposed along with this only a



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revocable check-off. I said to Mr. Adams: "If you will agree to give us a union shop, I will consider your proposal on a secret ballot vote, conducted by an impartial supervisor;" that our constitution was not allowing a non-union employee to vote on working conditions and wages.

Q. Did Mr. Adams make any reply, when you said that you would consider the company proposal on the secret ballot?

A. Yes, he did. He stated that the position of the company

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with respect to union security was unchanged, and that union security is only given on the basis of union responsibility.

Q. Were there any discussions about the use of company premises for this, if you can recall?

A. I went on with this. I don't know whether I stated anything to the company or not about using the company's premises but I was willing to consider using it.

Q. We want you to testify as to whether or not anything was said, if you can recall, that there was any provision made along that line.

A. I made the general statement that we would be willing to vote for the secret ballot on their proposal, if they would give us a union shop with it.

Q. You don't recall anything about company premises?

A. No.

Q. Is that all you can recall now of the conversation between the representatives present there on the strike vote question?

A. Yes, that is all.

Q. Do you recall whether or not there was any further discussion at this meeting concerning the parties to the agreement clause?

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A. Yes, there was.

Q. What was that discussion?

A. We also received a modification from the company at that meeting, and it was handed to us at the same time they submitted

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Exhibit No. 11, on a change in the parties to the agreement.

Q. Where is it?

A. It is on the third page.

Q. What was that?

A. They made the change that this would be as far as the parties—

Q. I will read it, and I think that would be better. Is this the language:

“This Agreement is therefore entered into by and between the Wooster Division of Borg-Warner Corporation (herein referred to as the Company) and Local Union No. 1239 of the United Automobile, Aircraft and Agricultural Implement Workers of America (herein referred to as the union).”?

Is that the change that they proposed?

A. Yes, it is.

Q. Was that the first time any change which you can recall was proposed in the language of the third paragraph of the preamble?

A. Yes, so far as I can remember.

Q. What was the change?

A. They changed the language to read “Local Union 1239 of the United Automobile Workers,” where the other was “affiliated with the International.”

Q. Did you make any reply or statement to the company with respect to their proposal or change on the parties to the

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agreement?

A. Yes, I did. I had received this proposal in the separate conference, along with the other, and the first discussion that I had was on this question of the parties to the agreement. As I had previously stated when Mr. Adams asked me at the meeting of March 31st, why didn't I propose the first Pesco language as to language on the parties to the agreement, I stated: "We now propose that the parties to the agreement be the same as in the original certification language of the Pesco agreement, which would be the International, Local 1239."

Now there was no discussion on that, as I recall, because Mr. Adams asked me what was my position on the secret ballot at this meeting, and I have testified to that.

\* \* \* \* \*

Trial Examiner: Am I correct in my understanding that you said you were not proposing the language which appears in the Pesco agreement, previously referred to?

The Witness: Yes, sir.

\* \* \* \* \*

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Q. (By Mr. Martin) So that there is no misunderstanding, is that the language which was read previously, which is "International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 363, CIO"?

A. That is the language, and we proposed at this meeting to substitute 1239 for that language.

\* \* \* \* \*

Q. There was another meeting held on April 21, 1953; do you recall that meeting?

A. Yes, I do.

\* \* \* \* \*

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Q. Do you recall how the meeting started out?

A. Yes, I started out the meeting by saying to Mr. Adams: "How about our proposal which we offered you on the 17th with respect to the parties to the agreement, when we proposed the original Pesco language?"

He stated that he saw no difference between that and his proposal.

I stated that we were interpreting the Pesco language, which said the "International; Local Union," and that the International was possessive of the local union.

Mr. Adams stated what I was trying to do was to interpret into that language that the agreement was primarily with the International Union.

Q. Did Mr. Adams make any reply to you at this meeting as to whether or not he would accept your proposal of the 17th with respect to the parties to the agreement?

A. He said that we should accept what he had offered. He

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wouldn't accept our proposal which we made on the 17th.

Q. Did you have any further discussion in general, then, concerning their proposal on the parties to the agreement?

A. I can't recall of anything particular to that point.

Q. Can you tell us anything else Mr. Adams said about the wording in the company's proposal as to the parties to the agreement?

A. No, I cannot.

Q. Did you have any further discussion at that meeting concerning the strike ballot clauses?

A. Well, I cannot recall except that Mr. Mooney made a statement. He stated: "Do you mean to say you have no further offer except what you have previously given

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as a basis of settling this dispute?"

And Mr. Adams stated: "There comes a time when there is no more to give and our proposal that we gave you prior to your strike vote, the economic and non-economic, is a fair proposal and you should accept that."

And Mr. Mooney stated: "You are forcing the International Union to a position where we cannot be a party to the agreement and by insisting that the International not be a party and by requiring that non-union people vote."

I can't remember what Mr. Adams stated, but I did state this, knowing from the facts that he had stated that he had no further offer—

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Q. Tell us what you said and what he said.

A. I said to Mr. Adams: "I want to ask you this question: If we will concede on all of the non-economic proposals that you have previously proposed and to your position in its entirety on economics, will you agree to make the International a party to the agreement and to eliminate your position that non-union employees will vote?"

Mr. Adams stated: "I think you should take it as it is."

Now, Mr. Mooney said: "Why don't you go see Mr. Blythe and have a discussion with him and have a little recess and see if you can come up with a fair proposal?"

Mr. Adams said: "We think ours is a fair proposal."

And I then said to Mr. Adams: "Why don't you go see Mr. Blythe and ask him if he will arbitrate this dispute?"

And Mr. Eddy thought at that time to call for a recess, and the company committee walked up toward Mr. Blythe's office, and they came back in about 15 minutes and they stated:



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"We believe that you should sign our last offer, including the amendments to parties to the agreement and the secret ballot that we gave to you on the last meeting of the 17th, and with respect to arbitration, we don't believe that an impartial person should determine our wages and hours and working conditions."

Q. Do you recall whether or not he made any other proposal with respect to trying to settle the dispute?

A. Yes.

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He stated that: "We will propose that a secret ballot election be conducted in which all employes in the bargaining unit will vote by secret ballot on whether or not to accept the company's last offer and that such election be conducted by Mr. Eddy of his office."

That was the proposal he made.

And Mooney said further—

The Witness: He said further—and I am only telling what he said—

"The non-union people will vote," and Mr. Adams said: "What is wrong with that?"

And Mr. Mooney said: "It is un-American." And that ended the meeting.

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*Cross-examination*

Q. (By Mr. Davis) Mr. Pappin, did I understand you rightly when you said you had been an international representative of the union since January, 1941?

A. I believe it was about that time.

Q. Of what local are you a member?

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A. I am a member of Local 522 in the Chevrolet Manufacturing Plant in Saginaw, Michigan.

. . . . .

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Q. What is the Borg-Warner Council that we have heard about here?

A. Well, the Borg-Warner Council is a delegated representation under the international constitution which allows the set-up of a council known as a corporation council, of which

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delegates represent in this council all affiliates of the corporation, and those affiliates are of the Borg-Warner Corporation.

Q. I hand you what has been marked as General Counsel Exhibit No. 61 and ask you if you will define or find for me the provision of the constitution that covers these councils. Is it Article 20?

A. Yes. It is indexed as Article 20, page 51.

Q. And what is the purpose of this Borg-Warner Council?

A. I can state what the purpose is.

Q. As you understand it. I can read what is in the book, what you understand is the purpose of it.

A. Well, the intra-corporation council is a council of which the constitution provides that representatives of the local unions under the international union will be allowed to meet and discuss the question of wages, hours and working conditions within the respective divisions or subsidiaries of that corporation.

Q. Well, what is the purpose of that discussion?

A. The purpose of the discussion is to see the reaction of the individual division management with respect to

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their policy as applied to contracts within the respective unions or in the case of other corporations or with respect to the national agreement covering a corporation-wide agreement which each individual division has certain rights specified with

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respect to local conditions which have been set forth in national agreements, that would be the property of the local union to negotiate.

Q. The union has contracts with how many divisions of the Borg-Warner Corporation, as you understand it?

A. I am not sure of the number, but I would say that there are ten to 12.

Q. And those are all separate contracts?

A. Are you talking of Borg-Warner?

Q. Yes, sir.

A. Yes, they are.

Q. Negotiated at each division by the union's particular local charged with responsibility there?

A. That is correct.

Q. When this constitution says—and I am speaking of Section 5, page 52, "The purpose of the intra-corporation council shall be to coordinate the demands of the separate members and to formulate policies in dealing with their common employer," does that mean that the purpose of the council is to try to get identical wages and conditions at all divisions?

A. I would say that's the objective.

. . . . .

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Q. So, the object of the Borg-Warner Council and of the union through the council is to try to obtain identical wages and conditions of work at those plants in those various loactions, as you said?

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A. Yes.

. . . . .

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Q. (By Mr. Davis) Now, Mr. Pappin, you have serviced, as International representative, the Pesco Products Division of Borg-Warner at Cleveland, Ohio, or Bedford—it is all the Cleveland area—have you, for how long?

A. I started organizing the plant in 1943, certified the first agreement in 1944. I only serviced it from then on.

Q. So that you have been connected in a union capacity with Pesco from even before the time your union was certified as the bargaining agent?

A. Are you talking about my union certified? You mean Pesco?

Q. Yes.

A. Yes.

Q. Now, what is the approximate population of Cleveland, roughly, a million people in greater Cleveland, isn't it?

A. I would say that.

Q. And how far from Cleveland is Wooster, Ohio?

A. About 60 miles.

. . . . .

Q. About how large a city is Wooster?

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A. Oh, I presume around near 15 to 20 thousand.

. . . . .

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Q. At the time your union made application for bargaining rights at the Wooster Division, no local was yet in existence at that division, was it?

A. That's what I understand.

Q. Well, you know that to be the fact?

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A. I do.

\* \* \* \* \*

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Q. That may account for the difference.

Now, calling your attention to General Counsel's Exhibit 4, and particularly to the wage proposals, they are headed, are they not, "Proposal of Local 1239, UAW-CIO, to Wooster Division of Borg-Warner Corporation"?

A. That's right.

Q. Now, there is a section in here in this exhibit also headed "Second Partial Report to Local 1239 UAW-CIO Bargaining Committee, January 19, 1953." Now, does that constitute a part of the non-economic proposals which you said had not yet been approved by the Local?

A. That is right.

Q. So that if I understand rightly, as a part of your service you prepared this proposal and then submitted it to the Local for their consideration and then their presentation

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to the Company as a bargaining proposal?

A. No. I represented the Committee who—

Q. I mean the Local bargaining committee.

A. The Local bargaining committee. I was represented with them and they went over and made the determinations by looking at the Pesco Agreement, of which that proposal primarily and greatly reflects.

Q. I don't think there is anything between us but I want to be sure I am right. Your function was to advise the Bargaining Committee of the Local, was it not?

\* \* \* \* \*

Q. And in carrying out that function you prepared a proposed contract, submitted it to the Bargaining Committee for its consideration and its determination as to



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what should be presented to the Company?

A. I didn't prepare it. The Committee, by unanimous position, went over each clause and determined that that would be the demand, and after they had made that determination—and I want to state, too, that I was a party to the discussion but not a party to the vote—that I then had their final proposal typed up for them and presented it back to them for ratification at the Local Union meeting, but I did advise, certainly—

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Q. (By Mr. Davis) As a matter of fact, this General Counsel Exhibit 4 is a pretty close relative of the contract that you had at Pesco, isn't it?

A. Of the Borg-Warner Division.

Q. Yes, at Pesco.

A. The Borg-Warner Division.

Q. It certainly is the Pesco contract with what few bad things, from the Union's standpoint, may be in that contract, pulled out; is it not?

A. There are very few. They were substantially the Pesco,

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which was manufacturing the same product as this plant was manufacturing, and it had the same customers.

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Q. You were talking strike, though, and conditions of strike, and the limitations and what would have to be done?

A. Yes. I stated to the company representatives that the UAW, from my experience, had had seven strikes, of which three were in Pesco, and that covered all the plants I serviced in the International since my inception with

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the International.

. . . . .

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Q. (By Mr. Davis) Did you discuss, when you were addressing the membership, the Pesco contract with reference to what they might expect to get at Wooster if your union were selected as the bargaining agent?

A. Yes, I did.

Q. What did you say on that point?

A. I told them that they should not expect to get the conditions that were at Pesco.

Q. They should or should not?

A. They should not expect to get them; that we were bargaining with a division that was separate from that local union, and that they would have to determine their own working conditions and expect to gain all that they could get within the strength which they had in the negotiations.

Q. What did you say about what they might expect with respect to the Pesco wage scale?

A. I did not in any way indicate that they would get those wages there.

Q. So you told them, when you were pressing the cause of the UAW-CIO for representation at that meeting, that they were making the same product but they did not need to expect to

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get Pesco rates or better?

A. I didn't want to be overly optimistic on that point.

Q. When you made the proposal to the company, or when the union made the proposal to the company, Exhibit No. 4 here, it was the Pesco contract, substantially, was it not?

A. Yes, I thought that was a fair position to start.

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I want to amplify that, though. The committee thought we should go out and strengthen them further but it seemed to me, where the division had not had experience there with the same representation, it would be ridiculous, and they should confine their position as close to that as possible.

Q. The first meeting, Mr. Pappin, where there was any discussion of your proposal, General Counsel's Exhibit 4, was the meeting of February 9, 1953, was it not?

A. That is right.

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Q. You say that when you threatened to strike on the 9th of February, even before the negotiations commenced, that you were talking about grievances and discharges. Do you remember on the next day, February 10th, you told the company committee that the way they were negotiating, you were ready to take the plant down at any time?

A. Well, I wasn't ready to take the plant down at any time.

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I am not denying that I made any reference to that, but certainly if there was any reference made, it was certainly the reaction of the membership and the committee, and not at my suggestion. It was from the trouble they were having in the plant, without an agreement and the company's attitude on discharging and transferring employees and all that.

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Q. On the meeting of the 10th of February, do you recall that there was a discussion about the temporary lay-off provisions of the proposed contract, as to whether it would be five days, without regard to seniority, or one

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day, and you and Mr. Adams were hasseling over that back and forth?

. . . . .

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Q. (By Mr. Davis) 13.8. What I asked you was, do you recall, after some discussion with Mr. Adams about that clause, you told the company representatives if the company insisted on that clause, you would strike the plant on that issue alone?

A. I can't recall saying that I would strike it on that issue alone. I know I never have struck a plant or recommended a strike, which I have not the right to call, and I have never recommended striking a plant, but the union members would.

Q. Do you mean the local union members?

A. They would determine the strike, and not me.

Q. It is fair to say, is it not, Mr. Pappin, that on behalf of the union you were the principal union negotiator and spokesman at these union meetings?

A. I would say that I discussed it considerably.

Q. And no other union member discussed it much?

A. There was some pretty good discussion from the union committee. I might state they were in agreement with all my statements.

Q. I don't question that. I do not want to leave that inference at all, that you misrepresented your people.

Now on the 16th of February, six days after the negotiations started, I think you testified that you told

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the company committee that the union had had a meeting the day before and had authorized the executive board to call a strike vote.

A. That is right.

Q. And without going into a lot of detail about it,

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there were repeated suggestions on your part to strike from then on through the negotiations, were there not?

Mr. Martin: I object unless he confines it to certain dates or certain propositions.

Mr. Davis: I will go through and pick them out for you, if you want that.

The Witness: I told them on the 16th, because that was the action of the local committee. I was only advising the company of their action.

\* \* \* \* \*

Q. When was it that you went to Detroit? Was it before the meeting, the 15th, that weekend?

A. I was in Detroit on the 13th.

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Q. What was that meeting in Detroit?

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A. That meeting in Detroit was a Borg-Warner Council meeting.

Q. Was the Wooster Division situation discussed at that meeting?

A. Yes, it was.

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A. Well, the discussion was, I made some comments at that meeting, and I told the delegates of the Borg-Warner Council that the company had proposed that a secret ballot election be conducted on company property in which non-union people could vote, and also that they were making or they wanted the agreement to be with the local union, and I told them that in previous skirmishes that the Borg-Warner Corporation did not want to have the agreement with the Borg-Warner Corporation, and they resisted it, but they were now trying to shove us to the position where it would be a local union.



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Further than that, I told them that the proposal and the actual negotiations in my experience in the International were the worst position that I had ever seen.

. . . . .

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Q. On the 18th, at this meeting with the bargaining committee of the company, you told them that you had been to Detroit the weekend before, and that the union told you they had \$14 million behind you, to back you up in your negotiations, didn't you?

A. I may have said that. I can't recall. That is probably one I would tell a company, this one or any other.

. . . . .

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Q. (By Mr. Davis) Mr. Pappin, at what meeting, if you remember, was it that you and Mr. Adams discussed the UAW contract with Allis-Chalmers at West Allis, Wisconsin? Do you remember?

A. I believe it was on the 17th of March. You are talking of West Allis?

Q. Yes.

A. Yes. I think it was discussed once before then. Mr. Adams told me we had an agreement, and I understood him to say at the time it was some washing machine company. And I asked him at that time if he could find out. He did not seem to know. He said he would report to me the name of the plant, and I believe it was on March 17th that he told me it was the Allis-Chalmers at West Allis, Wisconsin, who was the contractor.

. . . . .

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Q. You never made any investigation to determine what the situation was at Allis-Chalmers?

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A. No. Our International office.

Q. Did you inquire about any of these other contracts of which Mr. Adams talked to you about?

A. With respect to that?

Q. No, with respect to—

A. He never told me, as I can recall, of any agreements except he had six of them he had served. I do not recall his naming any particular agreements he had.

Q. Do you know whether or not your union has other agreements where the party named on behalf of your union as its local rather than the International?

A. There could be, possibly, but to tell you directly that I know what they are, I don't know. As far as my mind is concerned, any relation that I have had—there may be an exception to that, though. It might be I could have serviced a plant after the plants had already been certified and first negotiated, and I came into service a question and I probably would not go into that particular phase of it.

Q. Now, Mr. Pappin, you did not think you were violating the constitution of your union when you got the local certified at Pesco, did you?

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A. Well, that was in 1944, and I petitioned in the name of the International Local Union, and it was my interpretation of that language that that was an agreement primarily with the International and its local, and I so argued that at Pesco and we got it changed at the last time because there seemed to be some difference of opinion about my position.

Q. Do I understand that you want to state here for the record that the constitution of the UAW-CIO prohibits contracts between local representatives of that union and employer companies?

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A. Well, I want to say—

Q. You took the position in this bargaining, as you said this morning, that you told Mr. Adams, it was a violation of the constitution of your union to have the contract entered into between the company and the local representatives of your union, and I want to know now whether you really believe that is the fact?

A. Yes, I do.

Q. You are familiar with your constitution?

A. I am pretty familiar with it.

. . . . .

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Q. (By Mr. Davis) I call your attention, Mr. Pappin, to Article 19 of the contract, General Counsel Exhibit No. 61—

Mr. Martin: You mean constitution, do you not?

Mr. Davis: Yes, constitution. I am sorry.

Q. (By Mr. Davis) Section 1.

“It shall be the established policy of the International Union to recognize the spirit, the intent and the terms of all contractual relations developed and existing between Local Unions and Employers, concluded out of conferences between the Local Unions and the Employers, as binding upon them.”

That language does not prohibit any agreement between local unions and employers, does it?

A. Well, you can't take that in itself and make that—

Q. I ask you, does that language prohibit a contract between a local union and an employer?

A. I couldn't answer that yes or no. I think there are some things to the local union and some things to the international.

Q. Let me read it to you again.

Trial Examiner: Don't read it again. Let the witness

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read it.

Q. (By Mr. Davis) You read it. The first sentence in Article 19.

Mr. Martin: I want to object to this form of questioning. I think we should let the witness answer it fully, as he

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started to do, but if he wants to refer to other sections—

Mr. Davis: I want him to answer my question, Mr. Martin, not some other question. I am just asking about this now.

Mr. Goerlich: Are you asking him about his interpretation of that language?

Mr. Davis: I think my question was clear.

Mr. Goerlich: I object to it.

Trial Examiner: We will let the witness give us his understanding of that language. We are referring to the first sentence in Section 1 of Article 19.

The Witness: I really don't know how to answer this. I say my local union made the agreement, in a grievance or something like that, to make the determination of what it is, and certainly they have a part in the determination of the collective bargaining agreement, but I can't—

Q. (By Mr. Davis) Let's take the next sentence, Mr. Pappin.

"No officer, member, representative or agent"—

Trial Examiner: You skipped a sentence.

Mr. Davis: I am sorry. The second sentence speaks for itself.

"Each local union shall be required to carry out the provisions of its contracts."

Q. (By Mr. Davis) That would indicate a local union would have contracts, would it not?

Mr. Martin: I object.

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Mr. Goerlich: With the international.

Q. (By Mr. Davis) "Each local union shall be required to carry out the provisions of its contracts."

That is what it says, doesn't it?

A. Yes, it says that.

Q. It could not carry out the provisions of a contract unless it had one, could it?

A. That is true.

Q. The next sentence:

"No officer, member, representative or agent of the International Union or of any Local Union or of any subordinate body of the International Union shall have the power or authority to counsel, cause, initiate, participate in or ratify any action which constitutes a breach of any contract entered into by a Local Union or by the International Union or a subordinate body thereof."

Look at the next sentence:

"Whenever a Local Union"—I will skip the amalgamated—"becomes a party to an agreement on wages, hours or working conditions, it shall cause such agreement to be reduced to writing."

It says that, does it not?

A. Yes, sir.

Q. Will you show me a single place in this constitution that says a local union may not enter into a contract with an

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employer governing wages, hours and conditions of work? I will be patient with you.

A. I think I can.

Q. You can't find one, can you?

A. Yes, I can.

Q. Where?



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A. I believe in Article 6, Section 14:

"The International Union—"

Q. All right, let's look at that. Explain that to me.

A. "The International Union and the Local Union to which the member belongs shall be his exclusive representative for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment, and for the negotiation and execution of contracts with employers . . ."

Q. All right. How does that prevent the International and the Local as its bargaining agent agreeing to the signing of a contract by the Local?

A. That says that the International Local Union will become a part of the contract, and I determined that a tripartite contract, under the interpretation given to me.

. . . . .

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Q. That is correct.

Was there at any time in the negotiations at Wooster when Mr. Adams or any member of the company committee ever took the position that the company would object to the approval of a contract by the executive board?

A. No, they just said that the agreement would be with the local union.

Q. They never took the position they would object to the contract being approved by the executive board, did they, Mr. Pappin?

A. It never was raised.

Q. Then they never objected.

A. That is right.

. . . . .

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Was there any time when the company refused to sit down in a meeting with the International representatives of the union as well as local representatives?

. . . . .

The Witness: I will answer that no.

Q. (By Mr. Davis) Mr. Pappin, at any time during the negotiations at Wooster and in the meetings that you had, did Mr. Adams or any member of the committee ever tell you that the company would object to any international representative signing the contract on behalf of the union?

A. No, the question was never raised.

. . . . .

**313**

Q. (By Mr. Davis) Now, Mr. Pappin, as a matter of fact, didn't Mr. Adams tell you he assumed the contract would carry the signature of an international representative?

A. I can't remember. He may have. I don't know.

. . . . .

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Q. (By Mr. Davis) Now, you testified, Mr. Pappin, about, I think, three different meetings of Local 1239 about a strike where votes were taken, one with the Executive Board and, two, membership meetings; is that right?

A. Yes, I believe that is correct.

. . . . .

**322**

Q. (By Mr. Davis) That is what I am trying to find out, what proposals were submitted to the membership on the 15th of February.

A. We reported to the membership that we had asked the company for an economic report but they were not

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ready to submit it, and so we were only able to present what had been submitted.

Q. Was there ever any vote at that meeting of February 15th of the membership to reject or approve the company's proposals?

A. Yes, there was. The motion made at that meeting was—

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Q. You were at the meeting, were you not?

A. Yes. The motion was that we turn down the company's proposal, not accept their proposal, and give the executive board authority to notify the membership of the time and place to conduct a strike vote. That is as far as I know.

Q. Who else was there at that meeting, other than the membership of Local 1239?

A. Well, there were certain members, officers of the Pesco local, who were there. I am sure Joe Greulich was there.

Q. What was Greulich doing there?

A. Well, he came down here to observe, among other things. He may have said a few things about it. I don't recall what he said, but I do not doubt that he may have said something.

Q. Well, you were there.

A. I am sure he said something, although I could not swear to it.

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Q. You say the next meeting was when? February 27th?

A. Yes, the next meeting was February 27th. I think that I am confused about this meeting with reference to

*Testimony of Herbert J. Pappin*

Joe Greulich.

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He did not attend, so far as I know, the meeting on the 18th but I was thinking of the 27th. I am sure he attended the 27th but I am not sure of the 15th.

Q. Do you remember what he said at the 27th meeting?

A. No, I couldn't tell you what he said.

Q. Is it not a fact that he outlined the benefits of the Pesco contract?

A. He may have. I am not sure.

Q. Was it at that meeting or the next meeting where you handed the membership the summary which you had made in Cleveland, comparing the Pesco contract with the Wooster proposals?

A. That summary was passed out at the plant the Saturday before, and I had it in my hand at the meeting, to report to the membership.

Q. You went over that paragraph by paragraph, as you said?

A. That is correct.

Mr. Martin: He has not testified to that yet.

The Witness: It was the 27th.

Mr. Davis: I thought he had testified that it was the 27th.

The Witness: No, I am wrong on that. I will tell you what it was.

Q. (By Mr. Davis) It was the 15th of March, was it not?

A. The meeting was the 15th of March, where I had that summary, and on the 27th I made a report on negotiations.

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Q. I think that is right, Mr. Pappin. Look at our exhibit and see if it was not passed out on the 14th at the plant gates. I think that is right.

*Testimony of Herbert J. Pappin*

Mr. Martin has handed me the local union minutes for the meeting on the 27th.

It is stipulated that the minutes of the UAW-CIO, Local 1239, covering the meeting of February 27, 1953 contain on this subject the following:

"Report by President Butdorff on negotiations with Company and points they differ on regarding notification of recall from lay-off and seniority in lay-off. Herb Pappin also reported on negotiations. Joe Greulich, President of Local 363 at Pesco, assured our members that they will support us in any way possible, in the event of a strike at our plant. Other members and executive officers from Pesco local were introduced. They explained the importance of the strike vote by us in the respect of the aiding our bargaining committee in their negotiations with the company. Also reported on negotiations and urging for a strike vote were Wes Snoddy, Don Huffman, Jack Snowbarger and Bob Donaldson."

They were all members of the bargaining committee of the local, were they not?

A. That is correct.

Q. (Reading) "Request by Ray Stoddard that we cover the points of the agreement that have been agreed upon by both the

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company and the union and explain why the other points were not agreed upon. Herb Pappin began to report on the contract. Motion by Guy Thompson that the members give the committee a vote of confidence. Motion was stricken without a second for the discussion on it. Motion made, seconded and carried, that we conduct a strike vote. This strike vote was taken with the understanding that the bargaining committee negotiate with the company two weeks longer, at the end of which time another union meet-



*Testimony of Herbert J. Pappin*

ing be called. At that meeting the committee will present the proposal that they have agreed upon with the company. The members will vote to accept or reject the proposal, if accepted, there will be no strike, if rejected, the strike vote is in force. The vote was taken and the strike vote passed by a vote of 86 for, 20 against."

Are those minutes substantially accurate, as you recall?

A. Yes.

Mr. Davis: First, it is stipulated and agreed that the minutes of the special executive board meeting of Local 1239, held March 15, 1953 show that at that board meeting the executive board moved and seconded that the company's proposal be rejected and the bargaining committee be instructed to continue negotiations until Friday, March 20, 1953, at 7:00 o'clock in the morning. Failing to reach an agreement in its entirety the plant will cease operations at 7:00 o'clock a.m., March 20, 1953.

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That is the executive board meeting which you testified to this morning was held before the membership meeting. Is that right?

The Witness: That is a bittle bit expanded. That included the executive board and temporary stewards in that.

Mr. Martin: I think that is shown.

Mr. Davis: I have no question about that.

Q. (By Mr. Davis) The minutes show that the resolution which I read was unanimously approved by those present at the executive board meeting, including the stewards?

A. Yes.

Mr. Davis: It is agreed that the minutes of the meeting of the membership of Local 1239 UAW-CIO, held March 15th, contain the following:

"Report by Herb Pappin on our contract negotiations with the company to date. Joe Greulich, president of Pesco

*Testimony of Herbert J. Pappin*

Local 363, covered the differences in their contract at Pesco and our own contract and pledged us their wholehearted support in the event we desire to go out on strike. A resolution was read by the recording secretary that had been drawn up and unanimously approved by the executive committee prior to the meeting."

It may be agreed that that is the resolution which I have just read, as having been passed at the executive board meeting?

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Mr. Martin: It may be so stipulated.

Mr. Davis: "It was moved, seconded and carried that we have a show of hands on whether or not to have a secret ballot on the resolution. The show of hands indicated that a secret ballot must be taken on whether to accept or reject the resolution. While ballots were being prepared, Lefty Thomas, vice-president of Borg Counsel, said a few words on our position with the company. The vote was conducted and the resolution was adopted by a vote of 83 yes, 51 no."

The Witness: Thomas is not vice-president but is Assistant Director.

Q. (By Mr. Davis) I realize that they have got his title wrong. That is the last consideration which the membership gave to the proposals before the strike, is it not?

A. That is correct.

Q. After February 27, and particularly on March 11th and March 12th, the company handed proposals to you other than those which you had previously had, did they not?

A. You are talking of the 11th and 12th?

Q. Yes.

A. They presented their first economic proposal on the 11th and the non-economic proposal on the 12th.

Q. And the first meeting of the membership held after

*Testimony of Herbert J. Pappin*

those proposals were given to you was the one held on March 15th, was it not?

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A. That is correct.

Q. So that the only meeting at which the company's proposals given to you on March 11th and March 12th were ever considered by the membership was at the March 15th, meeting?

Mr. Martin: I object to the form of that question. I would not object if he said that the company's original proposal, as modified by the proposals of March 11th.

Mr. Davis: Let me make my own questions. You may make your own objections.

Mr. Martin: I am objecting on that basis. It is not in conformity with the facts.

Trial Examiner: The reference is to the company's last proposal on March 11th and 12th?

Mr. Davis: That is right. I think it is self-evident that the meeting of March 15th was the only meeting where those proposals were considered by the members.

The Witness: That was the only meeting.

Q. (By Mr. Davis) At that meeting you voted to shut the plant down on March 20th at 7:00 o'clock a.m., if agreement had not been reached before that time?

A. The membership voted. I did not.

Q. I mean the membership.

A. Yes, sir.

Q. And that vote passed by less than two-thirds of those present, did it not?

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Mr. Martin: I object. The minutes speak for themselves.

Trial Examiner: We can make the computation.

*Testimony of Herbert J. Pappin*

The Witness: It was 83 to 51.

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Q. (By Mr. Davis) Now, Mr. Pappin, let us get back to this undemocratic proposal to permit all the people involved to vote on the strike question. Did the company, or Mr. Adams, or anybody on its behalf, ever suggest to you that it proposed that non-members of the union vote in union meeting?

A. Do you mean in our local union meetings?

Q. In your union meetings. Is that correct?

A. No, they did not propose that they vote in our union meetings.

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Q. (By Mr. Davis) What was the date of your last meeting? Was that April 21 or April 27?

A. The last meeting with the Company was April 21.

Q. You testified, as I remember, that you or your committee offered to arbitrate the differences, and the Company representatives declined, and that Mr. Adams suggested the problem be resolved by a secret vote of the members of the bargaining unit to be held on the Company premises under the Mediation Board's supervision; is that right?

A. Yes.

Q. As a matter of fact, wasn't it the first suggestion on that subject of secret ballot from Mr. Eddy?

A. Well, Mr. Eddy read the statement at the early part of that meeting, sometime before this discussion, that arbitration was requested. He read a statement.

Q. With regard to disposing of the matter by secret ballot?

A. He had a book of rules there from the Mediator and he read that and said something about a secret ballot, yes.

*Testimony of Herbert J. Pappin*

Q. That is my only point, that the first suggestion of that subject as a possible means for resolving the differences, came from the Mediator?

A. I asked Mr. Eddy if he was proposing that and he said, "No, I am just reading it."

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Q. Let us put it this way: The first mention of the subject was by Mr. Eddy, wasn't it?

A. The first thing was a proposal by the Company that we had before we could terminate an agreement.

Q. Now! No, Mr. Pappin.

A. You mean at the meeting?

Q. That is the only thing we are talking about.

A. Oh, sure.

Q. All right, then.

I think you testified also that at this meeting you offered to accept all of the company's proposals if they would yield to your views on the strike ballot and on the parties to the contract. It wasn't quite that way.

A. I said "if."

Q. You were not making it clear.

A. I wouldn't accept it.

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A. I said I want to ask this question: "If the Company concede to the Union's position on all the disputes on economic and non-economic, will you concede to make the International a party to the agreement and eliminate your position of a secret ballot vote?" And Mr. Adams said: "I think you should take it as it is." That is the exact words that I stated.

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*Testimony of Herbert J. Pappin*

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Mr. Davis: As I have understood it, Mr. Pappin, you said in the negotiations that it would be unconstitutional under your constitution for the Union to agree to a provision which would permit all the members of the bargaining unit, including non-union members, to vote on the question on Company premises under impartial supervision to vote on the question as

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to whether or not a strike should be taken.

Q. (By Mr. Davis) Now, I want to know what provision you can point to in General Counsel's Exhibit 61 which would prohibit the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO) from entering into that agreement.

A. I can't think of any offhand except that—

Q. You can't point to any?

A. No, I can't.

Q. What provision of the constitution did you have in mind when you repeatedly said in the bargaining—when you said in the bargaining negotiations, "To enter into that agreement would be undemocratic and unconstitutional"?

A. Well, I have reference in the agreement, in the constitution, where the regional director must approve all actions taken which must be subsequently approved by the International Executive Board.

Q. Well, there is nothing—let me ask you is there anything in the constitution which would prevent the regional director approving such a contract?

A. Well, I can't think of any offhand.

Q. You didn't have any in mind when you said it was unconstitutional; then, any provision of the agreement?

A. I said it was in violation of our constitution.

*Testimony of Herbert J. Pappin*

Q. What provision of your constitution did you have in mind

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that it was in violation of?

A. The provision where it said that that agreement must be approved by the regional director.

Q. Was there anything in the constitution that would prevent his approving it?

A. I see here one section, Section 17, where it says that the International Executive Board shall have power to adjust disputes between employers and employes and to make contracts with the employers in accordance with this constitution, and the International Board has a right to interpret the constitution between conventions, and have so done on many occasions.

Q. We don't unfortunately, have the benefit of the presence of the Executive Board or whatever it is. If you are the man who said it was in violation of the constitution, you are the man to tell me what you had in mind. If you cannot find any provision in the constitution, I take it you had nothing in mind at the time.

A. I just stated it to the best of my knowledge.

Q. You don't know of any particular provision you had in mind, then?

A. No, I didn't.

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Q. (By Mr. Martin) Do you recall the question now?

A. Yes, I do.

Q. Does that reading of Article 49, Section 1 refresh your recollection?

A. Well, it refreshes my recollection because I told Mr. Adams we didn't allow non-union members to vote on

*Testimony of Herbert J. Pappin*

the right to strike, in the negotiations.

\* \* \* \* \*

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Q. Will you read the part of that section No. 1 that you referred to in your testimony?

A. "Only members in good standing shall be entitled to vote on the question of declaring a strike."

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A. Well, I told Mr. Adams in negotiations that we would not allow non-union people to vote on the question of strike, that the business of strike was the business of membership of the local union.

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Q. Greulich was at the meeting on March 15th, was he not?

A. Greulich was at the meeting on March 15th.

Q. That is what I am talking about. That was the last time the membership considered this proposition, before you took them out?

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Q. I will break it down for you, Mr. Pappin, because I do not think we want to waste too much time on it.

You did pass out at the plant, on the 14th, a statement comparing the Pesco contract with the company's proposal?

Trial Examiner: 14th?

Mr. Davis: The 14th.

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The Witness: Yes, sir.

Q. (By Mr. Davis) The meeting of the membership on the 15th was the last meeting in which you considered the negotiations before the strike commenced, was it not?

*Testimony of Herbert J. Pappin*

A. That is correct.

Q. At that meeting of the 15th Mr. Greulich, the president of the Pesco Local, spoke to the membership and compared the Pesco contract and what was proposed here?

A. That is correct.

Q. And at that meeting you went over paragraph by paragraph the differences between you and compared that with what the people had at Pesco?

A. That is right.

Q. But you said before the negotiations ever started you told them they should not expect to get Pesco rates?

A. Yes, sir:

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## TRANSCRIPT OF TESTIMONY

May 14, 1954

. . . . .

WAYNE WESLEY PATTERSON, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

## Direct Examination

. . . . .

Q. And you are employed or were employed at the Wooster Division prior to the strike, which occurred starting March 20, 1953; is that correct?

A. I was.

Q. Do you have any office in Local Union No. 1239?

A. At that time I was vice-president.

. . . . .

Q. Subsequent to the time that the strike started, did any supervisor at the company ever visit you at any time?

A. Yes, around April 7th to 10th, Mack McCune, Borg-Warner general foreman, and Dick Hunt, Borg-Warner tool foreman, came to my home at Shreve, Ohio.

Q. Tell us what time of day or night it was when they came?

A. It was pretty close to noon.

Q. What is your best recollection as to about when it was?

A. Between the 7th and the 10th.

Q. Of what month?

A. Of April.

Q. Tell us just what was said by either McCune or Mr. Hunt.

. . . . .



*Testimony of Wayne Wesley Patterson*

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or yourself at that time.

A. Well, they—

Q. Tell us who said what.

A. Both McCune and Hunt asked me why I didn't come to work, and I said there were things about the contract that I did not like, and they both stated that they would like to see me at work, regardless of whether we signed a contract or not, and that the company's proposed contract, including the 15 cents, and any additional thing, due to negotiations, would be in effect. I repeated then, if they would settle the strike, I would come back to work.

Q. Was anything else said by either Mr. McCune or Mr. Hunt during the course of that conversation?

A. Yes. I believe just before they left McCune made the statement, if we would forget the International—

Q. If you would what?

A. If the Local would forget the International, the Company would forget their expensive lawyers, and they thought maybe we could arrive at an agreement.

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Q. Did you call Mr. McCune back, then?

A. I did call Mr. McCune to discuss a possible meeting.

Q. What did you say and what did Mr. McCune say, to the best of your recollection?

A. At that telephone conversation it was agreed that we would go ahead with the meeting that the company suggested, without the International present.

Q. After that, was there any meeting of any group?

A. Yes.

Q. Tell us about that.

A. First I was to take the matter up with the local executive board.

*Testimony of Wayne Wesley Patterson*

Q. Did you have a meeting of the local executive board?

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A. Yes, we did.

Q. What happened at that meeting?

A. At that meeting it was decided that if the move was not unanimously approved, we would not go ahead with the meeting.

Q. Was it unanimously approved or not that you go ahead with the meeting?

A. No, there were two opposed to this meeting.

Q. Did you have that meeting then?

A. No, we didn't.

Trial Examiner: Unanimously approved by the membership?

Mr. Davis: He said the executive board.

Mr. Martin: Yes, the executive board.

Q. (By Mr. Martin) To get your testimony straight, is it your testimony—and if I am wrong correct me—that it was agreed that if the executive board did not unanimously approve the meeting, that you would not go to that meeting?

A. That is right.

Q. And your testimony is that it was not unanimous?

A. That is right.

Q. And so you did not have the meeting about which you were talking?

A. That is correct.

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Cross-examination

\* \* \* \* \*

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Q. Then McCune suggested that he thought it might

*Testimony of Wayne Wesley Patterson*

be helpful if there were a meeting with the local bargaining committee and the local company committee, without international representatives present?

A. That is correct.

Q. Then you talked to Butdorff about it, and you agreed to hold an executive board meeting?

A. That is correct.

Q. And you and Butdorff, as a matter of fact, agreed in advance of the meeting, that if it was not unanimous, you would not do anything about it?

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The Witness: No, that is not correct.

Q. (By Mr. Davis) Where was that agreed? By the executive board?

A. By the executive board.

Q. And since there were two votes against it, you made no effort to meet with the company?

A. That is right.

Q. As a matter of fact, after the executive board meeting, do you know that there were two negotiating meetings with the company committee, where the union bargaining committee and the international representatives were both in attendance?

A. Yes, sir.

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Q. (By Mr. Martin) You also know that subsequent to those meetings at which the International was present, there were further meetings between the local bargaining committee and the company alone; is that correct?

A. That is right.

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*Testimony of David Kauffman***387**

DAVID KAUFFMAN; a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

## Direct Examination

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Q. (By Mr. Martin • • • you were working in the tool room prior to the strike. Is that correct?

A. Yes, sir.

Q. You were classified as a B Operator—Bench Hand at \$1.75 an hour on the first shift. Is that correct?

A. Yes, sir.

Q. Did you cease work along with the other employes on March 20, 1953?

A. Yes.

Q. I will ask you this: It has been stipulated that General Counsel Exhibit 35, being a letter, was sent to all employes on or about May 4, 1953, to come in about work. Did you receive that letter?

A. Yes.

Q. Did you go into the plant around May 4th?

A. Yes.

Q. Whom did you talk with?

A. Mr. Barker.

Q. Tell us just what you said and what Mr. Barker said at that time?

A. Well, he said that they were doing away with some of the

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bench hands and at the moment there wouldn't be an opening in the tool room.

Q. There would or would not be?

*Testimony of David Kauffman*

A. There would not be..

Q. All right.

A. So he asked me about the milling machine job or a drill press job and tool grinding. First he didn't say anything about tool grinding. I told him I wasn't interested in the milling machines or the drill press department because of the lower rate of pay. So he said possibly I would hear from him within the 60-day limit.

Q. Did you say anything to him about the tool grinding department?

A. Well, the tool grinding job was offered to me two weeks later, when I went back in, approximately.

Q. I do not quite understand that. You said that on May 4th there was some mention of a milling machine job and a drill press job, and you told him you were not interested in those jobs because of the lesser rate of pay?

A. That is right.

Q. You also made some mention of the tool grinding job. Was that mention made by you or by Mr. Barker?

A. He said they would need tool grinders and they were going to post the job, and if they needed me they would call me. I was never called, and I told him I would take the tool

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grinding.

Q. Did Mr. Barker offer you any specific job on May 4th, when you were in there?

A. No.

Q. Did you ever hear from Mr. Barker or anyone connected with the company again with reference to employment?

A. He called me up, and I don't remember the date, but it was approximately two or three weeks later.

Q. What was said? Was that Mr. Barker again?



*Testimony of David Kauffman*

A. Mr. Barker called at home.

Q. All right. What was said at that time?

A. He asked me about either the milling machine or the drill press. I don't remember exactly, and I told him I was not interested.

Q. What did he ask you about that job?

A. He asked me if I wanted to come in and start working on that job.

Q. That is the drill press or the milling machine?

A. Yes, if I remember correctly, that is what it was.

Q. Did he tell you what the rate of pay would be for the job that he talked to you about?

A. I don't remember exactly if he did or not.

Q. Did he make any reference to whether it would be the same, more or less than you were previously receiving, or was no mention made of that point?

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A. Well, he said at a less rate of pay than I would normally be making, and he said it would be better than working at the station where I was working then.

Q. What was your reply to him at that time?

A. I just told him I didn't want the job because of the lesser rate of pay, and I think that was all that was said at that time.

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Cross-examination

Q. (By Mr. Davis) As I understand it, Mr. Kauffman, before the strike you were working in the tool room as a B. Operator?

A. Yes, sir.

Q. Were you an apprentice machinist?

A. No.

Q. How much time had you put in?

*Testimony of David Kauffman*

A. Do you mean when I first started?

Q. No, as a machinist.

A. I started in 1950 in the tool room.

Q. Then when the strike had occurred you had not finished your four years to qualify you as a machinist, had you?

A. I didn't know there was any qualification.

Q. You say you talked to Barker shortly after May 4th?

A. Yes.

Q. And was it then that he offered you a job as a tool grinder?

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A. I wasn't offered a job. We were speaking about the tool grinding job coming up at that time.

Q. You were offered what? A milling machine and drill press, and you did not want either of those?

A. No.

Q. You were not offered a job as a grinder but you said you would be interested in one if it opened up?

A. Yes.

Q. And Barker told you he would call you, if it did?

A. Yes.

Q. And he did call you on about July 24th, didn't he?

A. If that is the date. I don't remember correctly.

Q. He told you if you wanted to protect your seniority, you would have to come back, but you didn't want the job he offered?

A. That is right.

Mr. Davis: That is all.

*Redirect Examination*

Q. (By Mr. Martin) To get it straight, were you offered either the milling machine job or the drill press job on about May 4th, the first time you went in? Were

*Testimony of David Kauffman*

you offered any specific work?

A. No.

Q. I believe you testified that he asked you if you were interested in either the milling machine, tool grinding or

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drill press jobs on your first visit. I am talking about the visit you made to the plant on about May 4th.

A. I think we talked about it, yes.

Q. But on the second visit, in your second conversation, to which Mr. Davis referred as having occurred on July 24th, you were offered specifically a job either on the milling machine or drill press; is that correct?

A. Yes, sir.

Q. And you told him you did not want it because of the lesser rate of pay?

A. Because of the lesser rate of pay.

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Q. Did Mr. Barker then say what would happen to you with respect to your seniority or replacement rights, if you did not take those jobs?

A. I could not say because I don't remember.

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JOHN W. TINKEY, a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

## Direct Examination

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Q. (By Mr. Martin) Now, Mr. Tinkey, we have stipulated that prior to the strike you were employed in the

*Testimony of John W. Tinkey*

tool room at the Wooster Division of Borg-Warner, and your official classification was an A Operator—Bench Hand, at \$1.90 on the second shift. Is that correct?

A. Yes, sir.

Q. How many years of tool room experience have you had?

A. 14.

Q. At what kind of work in the tool room?

A. It has been tools and jigs and fixtures and gauges, and dies.

Q. You do all around tool room work?

A. That is right.

Q. Did you go out on strike when the other employees went out on March 20, 1953?

A. Yes.

Q. At the end of the strike on May 4th, did you go into the

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company to apply for work?

A. I did.

Q. To whom did you talk on May 4th, if you recall?

A. I talked to Mr. Barker, and he told me that the night shift had been discontinued, and by not reporting back, I think on April 20th, that my job had been filled, and that there was a possible chance that I would be called within the 60-day period. I contacted—

Q. Did you go to work at any time subsequent to May 4, 1953, and talk with Mr. Barker? Did you go to work after that?

A. Yes.

Q. When was the first time you went in, if you can recall?

A. I went in after I received the letter, and talked a few minutes.

*Testimony of John W. Tinkey*

Trial Examiner: Is that the first time you told us about?

The Witness: No, May 4th.

Trial Examiner: That was after you received the letter?

The Witness: Before I received the letter, after the strike was settled, when I went in.

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Mr. Martin: I will qualify that and will agree that there were many employes who came in on May 4th, even before receiving the letter, and asked for work. Do you agree?

Mr. Davis: That is right.

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A. On May 4th Mr. Barker told me I did not need to report after receiving the letter, but I didn't take any chances on that and I reported back after receiving the letter.

Q. When did you receive the letter?

A. I think about May 5th or 6th.

Q. You went back the second time?

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A. Yes, sir.

Q. After getting the letter which you were told you would receive?

A. Yes, sir. About ten days later I asked for a tool grinding job, and I was told that there were no openings.

Q. You say about ten days later you asked for a tool grinding job?

A. That is right.

Q. Did you go into the plant on that occasion?

A. Yes, sir.



*Testimony of John W. Tinkey*

Q. And talk with Mr. Barker?

A. Yes, sir.

Q. And what did he say when you asked him for the tool grinding job?

A. He said there were no openings.

Q. Did you ever hear from Mr. Barker or the company at any later date?

A. Yes, I did. It was some time, I think about the last week of July, they called, and my wife called me where I am working now, and told me, and I went into the shop that evening and talked to Mr. Barker, and he offered me a job on the drill press.

Q. Did he say what the rate of pay for that work was?

A. If I remember correctly, it was \$1.65 an hour, and I told him I would like to have a couple of days to think it over,

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and he told me, "I am going on my vacation, and you report back to who will be on my job in a couple of days," and I did.

Q. Just a moment before going further. Did he say \$1.65 was the current rate at that time for the job?

A. I think he did but I wouldn't say positively.

Q. You said that you did report back to someone after this conversation with Mr. Barker the latter part of July? The following Monday, did you say?

A. I believe that was on Friday evening when I was in to see him, and I reported back either Monday or Tuesday evening.

Q. With whom did you talk that time?

A. I can't think of the man's name right now but anyhow Mr. Barker's secretary—

Q. Was it Mr. McCune?

*Testimony of John W. Tinkey*

A. Mr. McCune was there, and he told me again that that was all they had to offer, and I said I could not see myself accepting the difference in pay.

Q. Have you ever heard from the company again subsequent to that date?

A. No, sir.

Q. Was anything said to you as to what would happen if you did not take that job on the drill press?

A. He said I would lose what seniority I had.

Q. Who told you that?

A. Mr. Barker told me that.

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*Cross-examination*

Q. (By Mr. Davis) Where are you working now—is it Mr. Tinkey?

A. That is right. M&H Tool and Die.

Q. When did you go to work there?

A. Approximately the 20th of May, a year ago.

Q. What is your rate?

A. I went to work at \$1.90 an hour.

Q. What are you getting now?

A. \$2.05.

Q. Where are you working there?

A. I beg your pardon?

Q. Where are you working there? I mean at what kind of job?

A. Tool and die maker, first-class.

Q. Is it not a fact, Mr. Tinkey, that when Barker told you that your job in the tool room had been abolished, and offered you a job on production, that you told him you could not see a tool maker working on a production job?

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*Testimony of John W. Tinkey*

The Witness: That is correct, I did.

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GEORGE MARTIN BRETTIN, a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

• • • • •

## Direct Examination

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Q. I will ask you if you received General Counsel Exhibit 33, which is the letter dated April 15, addressed to the employees to come in, advising them that their jobs were open, and so on? Did you get a letter similar or identical to that letter that was addressed to you?

A. That letter came to me to come back to work.

• Trial Examiner: I can't hear you.

The Witness: Yes, I got a letter to come back to work.

Q. (By Mr. Martin) Is that letter the same as this one, or don't you know?

A. I don't know.

Q. Did you go into work during the time the strike was on at any time?

A. Yes, when the strike was ended I went back.

Q. During the strike?

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A. I went back for one day. I got a letter and I thought the strike was over, see, so I went back for one day and I found the strike was still on there, so I left.

Q. You worked one day?

A. I worked one day, yes.

*Testimony of George Martin Brettin*

Q. In the tool room?

A. In the tool room.

Q. And what rate did you receive for that one day?

A. I think I got that 15-cent raise.

Q. That would make \$2.05 for that day?

A. Yes.

Q. Then you didn't go back to work during the rest of the strike?

A. No, I didn't.

Q. Did you go into the plant on May 4th when the strike ended.

A. Yes, I went back.

Q. And with whom did you talk, if anybody, on May 4th, the first day?

A. When I first got in there I didn't talk to anybody. I just waited there. The company was calling in certain people and I waited around there for about two hours before I seen a replacement list, and when I saw my name on the replacement list, why, it got me kind of upset, and I asked Betty, Jerry's stenographer, if I could see Mr. Barker to

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see about my job, and she said I would have to wait a while, and I never did hear from or see anyone about it, so I waited around some more and went home.

Q. Thereafter did you receive the three-day letter from the company telling you to come in?

A. Yes, I got the letter.

Q. And did you go in?

A. Yes, I did. I reported.

. . . . .

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Q. (By Mr. Martin) Can you tell us what dates you

*Testimony of George Martin Brettin*

were in there? You went in on May 4th?

A. Yes. I didn't—

Q. You didn't talk with anybody that day except these few brief words you had with the secretary to Mr. Barker?

A. That is right.

\* \* \* \* \*

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Q. After you were in at a date you fixed about May 6th and you say Mr. Barker said you didn't have to come in?

A. Yes.

Q. Did you ever hear from Mr. Barker after that or anyone from the company?

A. I didn't hear from him until, I believe, in July.

Q. About when in July? What is your best recollection?

A. I think the third week in July, I believe it was.

Q. I see. Tell us what happened that time?

A. Why, at that time I was just working on my basement when he called me and I asked him if I—he asked me about the work, about coming back to work.

Q. Did he ask you to come back to work?

A. He asked me to come down here about a job.

Q. All right. What did you tell him?

A. I told him I would come, but I was just working in my basement and it would take about a week before I got it done, and he said: "Come when you get it done," and I went in in the last week in July.

Q. Some time during the last week in July?

A. Yes.

Q. What happened at that time? With whom did you talk?



*Testimony of George Martin Brettin*

A. Jerry was on his vacation, and I talked to Mack, McCune.

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Q. McCune?

A. Yes.

Q. What did you say to Mr. McCune and what did Mr. McCune say to you?

A. He offered me a job in the milling machine department.

Q. All right. Did he tell you what the rate was?

A. \$1.87.

Q. What did you say to him and what did he say to you?

A. I tried to talk about coming back in the tool room, and he said I would never get back in the tool room.

Q. Is there anything else you can recall that was said?

A. As I understood at that time everybody else was going in at different jobs, so I thought I would take the milling machine job.

Q. Did you accept the job?

A. Yes.

Q. What shift?

A. Nights.

Q. Nights?

A. Nights.

Q. And you say prior to the strike you worked days?

A. Yes.

Q. All right. Did you go to work?

A. I went to work, yes.

Q. How long did you work?

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A. Oh, four days.

Q. What happened while you were working?

A. Well, there was quite a complication there.

*Testimony of George Martin Brettin*

Q. Just tell us in your own words.

A. The first day I worked nights, the first night I went to work, they put me on a drill press job, and I worked at that the first night and I was still supposed to be a set-up man. The second night I was put on a milling machine to operate a milling machine. I was supposed to be a Grade A milling machine operator and set-up man.

Well, I had some trouble there with the milling machine, because you couldn't make out with the rate. So I called the foreman and told him I couldn't make out and he said: "You are a Grade A operator and they make out."

I said: "I can't."

I said: "You will have to run a few pieces and show me, and if you can make out, I can."

And he tried to and he couldn't make out, himself.

Q. Who was that foreman?

A. Graham. He couldn't make out, himself, so the next night I just worked on, and the next night he put me up as a set-up man.

Q. On what kind of a machine?

A. A milling machine.

Q. What happened that third night on your set-up job?

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A. When I came in he said: "Go to the bench and get a print," and he gave me a number, and he said: "Set that job up on the milling machine there."

I went over to the bench, that drawer there, and there was no print there, so I looked around and couldn't get any information from anybody.

Q. What did you do? Just tell us what you said and to whom, if anything.

A. Well, at that time I went to see Mr. Graham.

Q. You went to see Mr. Graham. What did you tell

*Testimony of George Martin Brettin*

him and what he told you?

A. He said: "Set up this milling machine job."

Trial Examiner: He told you to get the print?

The Witness: He told me to get the print.

Trial Examiner: And you couldn't find it?

The Witness: I couldn't find it.

Q. (By Mr. Martin) Did you tell him you couldn't find the print?

A. Yes.

Q. What did he say?

A. He said: "Look for it."

Q. Then what happened?

A. Well, I did finally find it. I asked around and finally located the print. No one gave me any instructions of any kind. It was just like a lot of jobs there.

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Trial Examiner: You finally found it?

The Witness: I found the print and had to go to the tool crib to get the necessary tools to set up that job. I went to the tool room and they couldn't even find the tools. They were in the tool grinding department.

Q. (By Mr. Martin) Then what happened?

A. The tools weren't even sharp, and I had to wait for them to be ground. We had a machine there for grinding them, and after I got back to the tool grinding room I set the job up. It took quite a little time to set it up. Anyway, I got the okay from the inspector before I went home. And the next evening when I came in, Mr. Graham jumped on me because I took so long.

Q. Tell us what he said.

A. He said: "Set that job up," and if I wasn't a Grade A set-up man he was going to put me back to Grade B and give me \$1.50 an hour.

Q. And what did you say or do then?

*Testimony of George Martin Brettin*

A. That was when we were going home. So, I went home and thought it over and the next day I came for my tools. I thought before I got beat down I better leave.

Q. Did you say anything to anybody when you came for your tools the next night?

A. Graham wasn't there the next night. Bob Kindig was in charge.

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Q. Is that K-i-n-d-i-g?

A. I explained the situation to him, as I did to you, and he said: "You will have to use your own judgment." So, I left.

Q. Had you ever done production work or set-up work before at the Borg-Warner plant in Wooster?

A. No.

Q. In your experience at other places had it all been tool room work?

A. Yes, tool room work.

Q. Had you ever worked at production work?

A. I did in a different line of work, yes.

Q. What line of work was that?

A. Sheet metal work.

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## Cross-examination

Q. (By Mr. Davis) Mr. Brettin, are you sure you are right about the name of that foreman, Graham?

A. He was foreman at that time nights, and I am pretty sure it was Graham.

Q. My recollection is that Graham was on the day shift.

A. I say, I only worked there four nights and I might be mistaken about his name. I thought it was Graham.

Q. We can find out who your foreman was.

Who was the foreman in the tool room?

*Testimony of George Martin Brettin*

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A. Dick Hunt.

Trial Examiner: When was this, after the strike?

Mr. Davis: No, both before and after, the foreman in the tool room:

Trial Examiner: Day or night?

Mr. Davis: Day.

Q. (By Mr. Davis) And you worked the first shift in the tool room under Dick Hunt as foreman, did you?

A. That is right.

Q. On that first day, the 4th, when you went back to the plant, didn't you see Dick Hunt that day?

A. No. I never saw Dick Hunt until I got my tools.

Q. And you didn't get your tools until you quit in August?

A. I got my tools after I found out I was out of the tool room. That was after the strike.

Q. You found out you were out of the tool room, you said, on the first day, didn't you?

A. I didn't get my tools then, either.

Q. How soon did you get them?

A. After the strike, two weeks, anyway, I imagine.

Q. It was after the strike that you found out that your job had been eliminated in the tool room, wasn't it?

A. That's right.

Q. Is that when you got your tools?

A. Right away. No, I didn't get them right away. I just.

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waited a while, that's all.

Q. You think it was about two weeks before you got them?

A. That's right, after I found out I wasn't in the tool room any more or I didn't have a job any more, I just got



*Testimony of George Martin Brettin*

my tools.

Trial Examiner: That isn't at all clear. At least it isn't clear to me.

Mr. Davis: I think the witness has told me that he waited a couple of weeks and that he still didn't have any job in the tool room and that he went in then and got his tools.

Q. (By Mr. Davis) Is that right?

A. Yes.

Trial Examiner: Was this before or after you worked these four nights?

Mr. Davis: It was before.

The Witness: It was before that.

Mr. Davis: This is about two weeks after the strike.

Q. (By Mr. Davis) And at the time you got your tools didn't Dick Hunt tell you then you could have a job on production if you would work the night shift?

A. No. He didn't say anything then. I asked him about getting a job in the tool room, if I had done anything that I am out of a job there and if I am blackballed there, and he said: "No, there is just no job there, that's all."

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Mr. Davis: That is all.

Mr. Martin: That is all.

Mr. Davis: Just a minute, Mr. Brettin. I have one more question to ask you.

Q. (By Mr. Davis) Did you ever work second shift in the tool room?

A. No. The only thing I worked, I worked overtime a few nights, that's all. We worked right into the second shift.

Q. How old a man are you, Mr. Brettin?

A. 50.

Q. Since you have been grown you have spent most of

*Testimony of George Martin Brettin*

your time farming, haven't you?

A. Spent a lot of it, yes.

\* \* \* \* \*

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Mr. Martin: May it be stipulated that the following named individuals ceased work, along with other employees of the Wooster Division of Borg-Warner Corporation, on March 20, 1953, and individually reported for work to the Company on May 4, 1953, but were never offered re-employment:

Mildred Bahn

Rosanna Brady

Margaret Gisinger

Dorothy Snyder

Clara Westfall (reported May 6, 1953)

May it be stipulated that the following named individuals ceased work, along with other employees of the Wooster Division of Borg-Warner Corporation, on March 20, 1953, and thereafter reported for work to the Company on May 4, 1953, but were never offered re-employment. However, these individuals were hired as new employees without seniority on the dates noted alongside their names and at the rate noted alongside their names:

Helen Cadmus	Dec. 3, 1953	95c an hour
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Helen Jeffries	Aug. 31, 1953	95c an hour
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May it be stipulated that the following named individuals ceased work, along with other employees of the Wooster Division of Borg-Warner Corporation, on March 20, 1953, and thereafter reported for work to the Company on May 4, 1953, and these individuals resumed their former jobs with full seniority and

*Testimony of George Martin Brettin*

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all other rights and privileges on the dates noted alongside their names:

Ola Bittner . . . . .	June 3, 1953
Bernadine Daly . . . . .	June 18, 1953
Merrill Moutoux . . . . .	June 29, 1953
Robert Ross . . . . .	June 22, 1953

Mr. Martin: \* \* \* May it be stipulated that Henry Beyes, who was employed by the Company prior to March 20, 1953 as an advance learner at \$1.45 per hour, ceased work, along with other employes of the Wooster Division of Borg-Warner Corporation, on March 20, 1953, reported for work to the Company on May 4, 1953, and resumed work for the Company on June 29, 1953, as a B operator drill press at \$1.55 an hour with full seniority and all other rights and privileges.

May it be stipulated that Harry Fittler ceased work, along with other employes of the Wooster Division of Borg-Warner Corporation, on March 20, 1953, reported for work to the Company on May 4, 1953, resumed his former job with the Company with full seniority on May 11, 1953, but on the second shift, whereas he had been employed on the first shift prior to March 20, 1953? May it be further stipulated that he returned to the first shift on September 28, 1953?

May it be stipulated that Harold McKee ceased work, along with other employes of the Wooster Division of Borg-Warner Corporation, on March 20, 1953, resumed his former job with the

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Company on May 4, 1953, with full seniority on May 11, 1953, except that he was assigned to the second shift,

*Testimony of George Martin Brettin*

whereas he had been employed on the first shift prior to March 20, 1953?

May it be stipulated that Robert Ostrom, who was classified as a set-up man at \$1.80 per hour prior to March 20, 1953, ceased work, along with other employees of the Wooster Division of Borg-Warner Corporation, on March 20, 1953, reported for work to the Company on May 4, 1953, and resumed work for the Company on May 4, 1953, as a turret lathe operator at \$1.80 per hour, 15c an hour less than his previous position paid? May it be further stipulated that he was restored to his original job at the regular rate for set-up on October 26, 1953?

May it be stipulated that Robert Ostrom, who was classified as a set-up man at \$1.80 per hour prior to March 20, 1953, ceased work, along with other employees of the Wooster Division of Borg-Warner Corporation, on March 20, 1953, reported for work to the Company on May 4, 1953 and returned to work with full seniority on June 15, 1953, but in the position of A operator at 15c an hour less than the rate he would have received had he returned to his original position?

May it be stipulated that Albert Poulson, who was employed as set-up man at \$1.80 an hour prior to March 20, 1953, ceased work, along with other employees of the Wooster Division of Borg-Warner Corporation, on March 20, 1953, reported for work to the Company on May 4, 1953, and returned to work with

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seniority and all other rights and privileges except that he returned to work as an A operator on May 4, 1953 at 15c an hour under the rate of set-up man?

May it be stipulated that Wallace Totten, who was employed by the Company as an advance learner at \$1.45 an hour prior to March 20, 1953, ceased work, along with

*Testimony of George Martin Brettin*

other employes of the Wooster Division of Borg-Warner Corporation, on March 20, 1953, reported for work to the Company on May 4, 1953, and returned to work with full seniority but as B operator drill press on June 29, 1953? His job paid 5c an hour less than the rate for his former job.

May it be stipulated that Emmett Treece, who was employed by the Company as a B operator at \$1.50 an hour prior to March 20, 1953, ceased work, along with other employes of the Wooster Division of Borg-Warner Corporation, on March 20, 1953, reported for work to the Company on May 4, 1953, and returned to work as a sweeper on July 27, 1953, at \$1.35 per hour? This individual returned to work with seniority and all other rights and privileges except that he was hired at a lower rated job.

Will counsel for the Respondent so stipulate?

Mr. Davis: Yes, sir.

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May it be stipulated by and between the parties that Peter Baird, if called, would testify that prior to March 20, 1953, he was employed at the Wooster Division of Borg-Warner as an advanced learner doing grinding work at \$1.35 per hour on the first shift. He ceased work along with others on March 20, 1953 and reported back to the company on May 4, 1953 and asked for his job. At that time he was advised by Mr. Barker that nothing was available for him. Thereafter on or about July 11, 1953, he was called in by the company and talked with Mr. Barker. Mr. Barker offered him his old job at the current rate, 15 cents an hour over the rate



*Testimony of George Martin Brettin*

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prior to March 20, 1953, but on the second shift, for which he would have been paid the night shift differential of six cents per hour. Baird stated to Mr. Barker that he was not interested in employment on the second shift as he had a boys baseball team he was interested in during the early evening hours, and also went to prayer meeting every Wednesday night. He asked Mr. Barker if he could get transferred to the first shift shortly if he accepted work on the second shift, but Mr. Barker stated he couldn't say.

Baird asked Mr. Barker to let him know if anything opened on the first shift but never heard from the Company thereafter.

. . . . .

Mr. Martin: May it be stipulated by and between the parties that Donald Burnett, if called as a witness, would testify that prior to March 20, 1953 he was classified as a chucker, A Operator, on turret lathes at \$1.65 per hour on the first shift. He ceased work along with others on March 20, 1953 and reported back to work on May 4, 1953 and asked for his job.

He talked to Mr. Barker and Mr. Barker stated that there was no work for him at that time but if there was any opening between that date and July 31 he would be called.

Prior to July 13, 1953 Burnett received word from the Respondent to contact Mr. Barker, and he went in to see Mr.

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Barker on July 13, 1953. At that time Mr. Barker offered him a job as a drill press operator at \$1.70 per hour on the second shift. He would also be paid a night shift differential in addition.

*Testimony of George Martin Brettin*

Burnett told Mr. Barker that he could not work nights as his wife worked nights, and he had to stay home with the children but could work the first shift as he had done before March 20, 1953.

Mr. Barker asked him to think it over and call him. On July 17 Burnett phoned Mr. Barker's wife at home and told her to tell Mr. Barker that he could not accept the job offered as he had been unable to reach Mr. Barker on the telephone personally.

Might it be so stipulated?

Mr. Davis: Yes.

Mr. Examiner, let the record show that with respect to Baird, the employee about whom the stipulation was made just previously, that first the Respondent contends that the job offered to him was substantially equivalent employment, and that the job he held before the strike is in the same seniority group, Group No. 2, as the job he was offered subsequent to the strike, and, further, that the seniority groupings appear on page 16 of General Counsel Exhibit 13, this being Section 13.1 (b) of the labor contract.

Mr. Martin: May it be stipulated by and between the

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parties that Clinton Crisco, if called to testify, would testify that he was employed prior to March 20, 1953 at the Wooster Division of Borg-Warner Corporation as an advanced learner at \$1.40 per hour. He worked on turret Lathes on the first shift. He ceased work along with others on March 20, 1953, and reported for work at the plant on May 4, 1953. He asked for his old job. He was told there was no work available for him at the time.

On July 2, 1953, he was called by the company and talked with Mr. Barker. He reported on 7/6 when Mr. Barker told him he had a job for him in the drill press department on the second shift. He was told that he would

*Testimony of George Martin Brettin.*

receive his old rate plus the 15 cents per hour increase that had been placed in effect and the night shift differential of six cents per hour.

Crisco told Mr. Barker he would not accept work on the second shift.

In September of 1953 Crisco made application for employment at the company and was hired as a new employe on October 1, 1953 without seniority at the same job he held prior to the strike on the first shift. Some time later he was transferred to the night shift at his own request. He is still employed by Respondent. When he was hired on October 1, 1953 he received his old rate plus the 15 cents increase.

May it be so stipulated?

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Mr. Davis: It may be so stipulated, but let the record show that the company contends that the first offer of work referred to in the foregoing stipulation constitutes an offer of substantially equivalent employment particularly in view of the employe's later request to be later transferred to the second shift when he accepted employment at the later date.

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Mr. Martin: May it be stipulated by and between the parties that Dorance Frease, if called to testify, would testify that prior to March 20, 1953 he was an A Operator, Electrician, at the Wooster Division of Borg-Warner Corporation at \$1.60 per hour on the first shift. He ceased work along with others on March 20, 1953 and reported back to the company on May 4, 1953 and asked for his job. On May 4th he was told there was no opening for him.

On or about July 24, 1953 he was called by the company and went in on July 28th and talked with the general foreman, McCune, who told him they had an opening as

*Testimony of George Martin Brettin*

a drill press operator at \$1.40 per hour on the second shift.

Frease told McCune that his wife did not want him to work nights. McCune said that that was all they had to offer.

Do you so stipulate?

Mr. Davis: May be so stipulated, yes, sir.

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Mr. Martin: May it be stipulated by and between the parties that Henry Lance, if called to testify, would testify that he was employed at the Wooster Division of the Borg-Warner Corporation prior to March 20, 1953 as an A Operator, Electrician, at \$1.60 an hour on the first shift. He ceased work along with others on March 20, 1953, and on May 8th reported back to the company for work. He talked with Mr. Barker who told him that he had been replaced.

Barker then asked him if he would take a different job with the company. He said he had a drill press job open and that it was at a lower rate of pay than the electrician's job.

Lance stated to Mr. Barker that he only wanted to work as an electrician and if Mr. Barker had electrician's work he would take it.

On or about July 24, 1953 Lance was called by the company and offered several production jobs. He declined, stating that he was interested only in electrician's work. He was told that these were lower paying jobs and lower than electrician's work.

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Mr. Martin: May it be stipulated by and between the parties that Paul Haidet, if called to testify, would testify that he was employed at the Wooster Division of the Borg-Warner

*Testimony of George Martin Brettin*

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Corporation as an advanced learner, turret lathe bar operator, on the first shift at \$1.45 per hour prior to March 20, 1953. He ceased to work along with others on March 20, 1953, and reported back to the company for work on May 4, 1953, when he was told by Mr. Barker that he had been replaced.

He was called July 10, 1953, by the company and went in to see Mr. Barker on July 11, 1953, at which time Mr. Barker offered him work in the drill press department nights at the current rate of \$1.60 per hour, plus the six-cent night shift differential.

Haidet stated that he was working at Crater Motors, earning between \$60 and \$70 per week. He told Mr. Barker that he would let him know the following Saturday or Monday. On Monday he went in and told Mr. Barker that he would not accept the job, that when he told Crater Motors of the Respondent's offer, Crater Motors gave him a guaranteed weekly salary plus commissions and that he did not want to work nights.

He asked Mr. Barker if there was any chance of getting on days later in his old department, and Mr. Barker said he would be the first to be called. Haidet said if he decided to come back later he would be willing to come back as a new employe.

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May it be stipulated by and between the parties that Warren Jordan, if called to testify, would testify that prior to March 20, 1953 he was employed at the Wooster Division of Borg-Warner as a tool inspector at \$1.85 per hour. He ceased to work on March 20, 1953, along with others.

Trial Examiner: Any shift question there?



*Testimony of George Martin Brétin*

Mr. Martin: There is no problem about a shift here. He never at any time reported back to the plant on May 4th, or any subsequent date, although he knew the strike had terminated.

Prior to March 20, 1953 he resided at 330 North Walnut, Wooster, where he roomed. After the strike started and was in progress, he moved back with his wife and family to RFD No. 1, Norwich, Ohio. This was about ten days after March 20, 1953.

He received some letters from the company during the strike at Norwich, Ohio, but does not deny that such letters may have been forwarded to him from Wooster in some way.

Mr. Davis: I assume that that means that he does not deny that they may have been addressed to him at Wooster and forwarded?

Mr. Martin: That is right, but there is something further.

He did not leave a change of address notice with the Wooster Post Office when he moved and never notified the company of any change in address. He never received any registered letter from the company, telling him to report

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back.

Mr. Davis: It may be so stipulated.

It is further stipulated and agreed with respect to Warren Jordan, that the company mailed to Jordan on May 4th a registered letter, advising him of the termination of the strike and requesting him to return to work. This letter was not only registered but had a return receipt. The company received the registered letter by return on May 15th as undeliverable. The company also received the return receipt, which was signed by Guy.

*Testimony of George Martin Brettin*

Thompson. That was registry receipt No. 4816.

\* \* \* \* \*

May it be stipulated by and between the parties that Charles Myers, if called, would testify that prior to the strike he was employed at the Wooster Division of Borg-Warner Corporation as an A Operator in the maintenance department at \$1.60 per hour on the first shift. He ceased work along with others on March 20, 1953, and reported back to the company on May 4, 1953, and asked for his job. At that time Mr. Barker told him his job was eliminated; that there might be an opening later. On June 27, 1953, he was called in by

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the company and offered a job in assembly at \$1.50 per hour. He told Mr. Barker that he would not accept it.

Mr. Martin: That is right. He said he thought he would stay at Koontz's Nursery, where he was then working, and which he liked very much.

Mr. Davis: It may be so stipulated.

Mr. Martin: May it be stipulated by and between the parties that Richard McHenry, if called to testify, would testify that he was employed at the Wooster Division of Borg-Warner Corporation as a precision welder at \$1.85 per hour prior to March 20, 1953; that he ceased work along with others on March 20, 1953, and reported back to the company and asked for work on May 4, 1953. He was told on May 4 by Mr. Barker that there was no work for him, that his job had been eliminated.

On July 24, 1953, he was advised by the company that there were several production jobs at a lower rate of pay open. He said he was not interested in them, and declined to come into the company to discuss them.

Mr. Davis: It may be so stipulated.

*Testimony of George Martin Brettin*

Mr. Martin: May it be stipulated by and between the parties that Wesley Snoddy, if called to testify, would testify that he was employed as a tool crib attendant lathe man prior to March 20, 1953, at the Wooster Division of Borg-

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Warner Corporation at \$1.65 per hour, and that he ceased to work along with others on March 20, 1953. On May 4, 1953, he reported back to the company and asked for work, saw Mr. Barker, and was told there was no opening for him at the time. About July 24, 1953, Mr. Barker called him and asked if he was interested in returning to the drill press department at \$1.50 per hour. Snoddy told Mr. Barker that he was interested in returning to his old job at the old rate, plus the increase, but was not interested in the drill press job Barker was offering. Barker stated that his old job might not be available by July 31st. Snoddy then inquired of Mr. Barker about second shift openings and rates, and Mr. Barker asked him to come in, and Snoddy said he would. Mr. Snoddy came into the company on July 25, 1953, at 8:00 a.m., and was told that Mr. Barker would be in soon, and asked to wait. He declined, saying that he was helping his father farm, and that he did not see any point in waiting.

. . . . .

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Mr. Martin: May it be stipulated by and between the parties that Clifford Stanford, if called to testify, would testify that prior to March 20, 1953 he was classified as an advanced learner working on Turret lathe at \$1.35 per hour. He ceased to work along with others on March 20, 1953 and reported back to the company on May 4, 1953 and asked for work. He was told by Mr. Barker on May 4, 1953 that the company had nothing for him.

*Testimony of George Martin Brettin*

Around June 5, 1953 he went in to see Mr. Barker again and asked if he was going to be called back. Barker said he did not know how long it would be or if he would be called back. He thereupon quit his job and delivered a signed quit slip to Mr. Barker.

\* \* \* \* \*

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Trial Examiner: All right.

Mr. Martin: Mr. Juchum stated he had never worked nights. Mr. Barker said that the chances were slim at that time for his getting a job and that he had nothing for him.

Prior to March 20, 1953 he was employed on the first shift. On May 14, 1953, Mr. Juchum called and said that if the company could not use him, he would get another job.

The Company told him that they would call him as soon as there was an opening.

On July 24, 1953 Respondent called him and told him there were job openings, and asked him to come in. He was asked if he would consider something else, as there was no work in the tool room. He was told that the jobs open would not pay as much as he had made before. Mr. Juchum replied that he was working at Bendix Westinghouse, getting \$2.30 an hour, and was not interested in coming back to the Wooster Division. He asked to be remembered to his foreman and the men in the tool room.

Mr. Davis: It may be so agreed.

May it be stipulated that Harold A. McKee quit his employment with the Respondent on June 10, 1953, and that Wallace Totten quit his employment with the Respondent on July 13, 1953?

Mr. Martin: That is correct.

*Testimony of George Martin Brettin***441**

Mr. Davis: Let the record show that Merrill Moutoux was offered a job subsequent to the strike, which was in the same seniority group, that is to say Group No. 2, as the job he held prior to the strike, and that the seniority group to which reference is made is shown on page 16 of General Counsel Exhibit No. 13.

Let the record also show that Wayne Patterson was offered a job subsequent to the strike, which was in the same seniority group, that is to say, a labor pool.

Trial Examiner: The job offered to Moutoux, after the strike, was in the same seniority group?

Mr. Davis: That is correct.

Trial Examiner: And, similarly the job offered to Patterson after the strike was in the same seniority group as the job he held before the strike?

Mr. Davis: That is correct. And the same thing is true—

Trial Examiner: Is the labor pool listed in General Counsel Exhibit 13?

Mr. Davis: I was going to pick up all those at the end, if you wish.

Trial Examiner: Yes, sir.

Mr. Davis: And the same is also true of Robert Ross. I will specify the group.

Trial Examiner: We have the group for Moutoux, which was No. 2.

**442**

Mr. Davis: And we have it for Patterson, the labor pool, and in the case of Ross the seniority group was Group No. 5, all these groups being shown on page 16 of General Counsel Exhibit No. 13.

. . . . .



*Testimony of Wayne Wesley Patterson***444**

WAYNE PATTERSON, having been previously duly sworn, was recalled by and on behalf of the General Counsel, was examined and testified further as follows:

## Direct Examination

Q. (By Mr. Martin) Now, Mr. Patterson, you have testified previously and were sworn, were you not?

A. I was.

Q. It has been stipulated here that prior to the strike you were classified as a lead man and were paid \$1.55 an hour; is that correct?

A. That is correct.

Q. What shift was that on?

A. The first shift.

Q. And it has been further stipulated that you went back to work for the Company on June 15, 1953 and you were hired at the position of A operator; is that correct?

A. That is correct.

Q. And what shift did you work on when you first went back?

A. I was hired for the second shift but I worked one week on days.

. . . . .

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Trial Examiner: I think it is clear to me but I am not certain that it is or will be on the record. You mean you were hired for the second shift but the first week worked on days and then went on the second shift?

The Witness: That is right.

Q. (By Mr. Martin) You continued to work at the A operator's rate on the second shift, did you?

A. That is right.

Q. For how long?

*Testimony of Wayne Wesley Patterson*

A. Well, offhand, I couldn't tell you, but I would say it was at least a month or more.

Q. And what happened at that time?

A. At that time Lou Schaller came out to me and stated that they wanted to start up the second shift and asked if I would accept lead man on the second shift, because there were no supervisors or foremen in that department at that time.

Q. The lead man classification was the same classification that you had held on the first shift before March 20, 1953; is that correct?

A. That is correct.

Q. Then what happened?

A. I told Mr. Schaller that I didn't want the lead man position if it interfered in any way with my getting on days, and he said that it would not.

Q. Well, then, what happened? Did you take the lead man's job?

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A. I bid on the lead man's job and got it.

Q. And you got it. Do you recall about when that was?

A. I can't recall the date right now.

Q. What, if anything, happened thereafter?

A. Around the first of November, I believe, or the middle part, Homer Butdorff was made a foreman and I automatically became President of the Union according to the Constitution.

\* \* \* \* \*

A. I then, being President of the Union, or the Local, could not resume my duties working on the second shift.

Q. When did the Local hold its meeting?

A. Right after work.

Q. It was after the day shift quit work?

A. That's right.

*Testimony of Wayne Wesley Patterson*

Q. As President of the Local, was it your function to be in attendance at these meetings?

A. It was.

Q. What, if anything, did you do with reference to your position with the Company?

A. I went to—I just don't remember who it was—Summer or Barker, and asked to be transferred on days, and they told me that they could not transfer me on days as lead man because they already had one, so I requested to be brought on days as a

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day operator so I could function as President of the Local.

• • • • •

**TRANSCRIPT OF TESTIMONY**

May 17, 1954 .

Mr. Martin: That is correct. With respect to William Dilgard, I request that his name be removed from the list of discriminatees in the list attached to the complaint and be dismissed from the case.

Trial Examiner: Is there any objection?

Mr. Davis: No objection.

Trial Examiner: Motion granted.

Mr. Davis: With respect to George Orr, Respondent moves that he be dismissed from the case and stricken from the list.

of discriminatees because there is a complete failure of evidence to show that he ever went on strike or that if he did he was not returned to his original job.

Mr. Martin: I have no objection to the motion of Respondent.

I have made every effort to get hold of George Orr to appear and testify here and also have had other people try to get in touch with him and he has failed to get in touch with us, and under the circumstances I, therefore, do not oppose the motion of Respondent.

Trial Examiner: Motion is granted. The complaint will be dismissed as to Orr as well as Dilgard.

\* \* \* \* \*

JAMES SIMONE, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified to as follows:

\* \* \* \* \*

*Testimony of James Simone*

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Q: Were you present at the membership meeting?

A. I was present at one of them.

Q. What other International representatives were present?

A. Roback and I only were there at the meeting referred to.

Q. Did you say anything?

A. I made some remarks there.

Q. What did you say?

A. I said it was regrettable, economically; that they should not continue the strike any longer. Their jobs were at stake and I felt they had a decision to make that I would make no recommendations, probably the local union could decide what they wanted to do.

\* \* \* \* \*

Q. You said it was regrettable, it was an economic situa-

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tion, that they couldn't continue the strike?

A. That's right.

\* \* \* \* \*

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Mr. Davis: Respondent offers in evidence in connection with the cross-examination of the last witness Respondent's Exhibit No. 13.

\* \* \* \* \*

Trial Examiner: Respondent's Exhibit No. 13 is received in evidence.

\* \* \* \* \*

Mr. Davis: May it be stipulated that Respondent's Exhibit No. 14 is an advertisement inserted in the Wooster Daily Record on March 30, 1953, and paid for by the



*Testimony of James Simone*

UAW-CIO, Local 1239; and that Respondent's Exhibit No. 15 is an advertisement appearing in the Wooster Daily Record of March 31, 1953, inserted and paid for by UAW-CIO, Local 1239; that

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Respondent's Exhibit No. 16 is an advertisement appearing in the Wooster Daily Record of April 2, 1953, signed as inserted and paid for by International UAW-CIO; and that Respondent's Exhibit No. 17 is an advertisement appearing in the Wooster Daily Record of April 7, 1953, inserted and paid for by UAW-CIO Local 1239.

Mr. Martin: With the exception of the fact that I have been advised that the International paid for all these, I will so stipulate.

Mr. Davis: Will you stipulate that Respondent's Exhibits Nos. 14 and 15 contained in their text "This ad is paid for by the UAW-CIO, Local 1239."?

Mr. Martin: I will stipulate that is so. My understanding is that they were placed there by the Local but actually the money came from the International, I am told. The ad was placed by the Local.

Mr. Davis: There is no question what the ad says, is there?

Mr. Martin: That is right. I am stipulating that this is the ad which appeared in the paper.

Mr. Davis: In Respondent's Exhibit No. 16, it is signed "International UAW-CIO," and no mention of the local.

Mr. Martin: It is so stipulated.

Mr. Davis: And Respondent's Exhibit No. 17 is signed "UAW-CIO Local 1239," without a comma.

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*Testimony of James Simone*

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Mr. Davis: May it be stipulated that Respondent's Exhibit No. 18 is a correct copy of a Strike News Bulletin,

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distributed among the members of the bargaining unit of the Wooster Division of Borg-Warner on March 30, 1953; that Respondent's Exhibit No. 19 is a similar bulletin, similarly distributed on March 23, 1953; and that Respondent's Exhibits 20-A and 20-B constitute a true copy of a bulletin similarly distributed, shortly after March 25, 1953? It does not appear to be dated but I assume that it was distributed almost immediately after the date of the agreement referred to therein.

. . . . .

Mr. Davis: Respondent offers in evidence Respondent's Exhibits 18, 19 and 20-A and 20-B.

Trial Examiner: Any objection?

Mr. Martin: No objection.

Trial Examiner: The documents are received, as respectively identified.

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Mr. Davis: May it be stipulated that the minutes of Local 1239 of a special meeting of the membership of April 25, 1953 state as follows:

"Report by the President on contract negotiations

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to date. Mentioned by President on strike in process at Warner Gear in Muncie, Indiana. Jimmy Simone made regrets for Leonard Thomas for not being present since he was called to Chicago to make preparation for Borg Council meeting"—which I assume refers to Borg-Warner Council meeting. Is that correct?

*Testimony of James Simone*

Mr. Martin: That is correct.

Mr. Davis: (Continuing reading) "to be held there Saturday and Sunday. Recommendation by the President that we take a vote on whether or not to go back to work. There was much discussion on the subject. Moved, seconded and carried that we instruct our committee to contact the company Monday, April 27th and get the best offer possible and call a meeting for Tuesday, April 28th, to take a vote as to whether or not to go back to work."

And that the minutes of a special meeting of the membership of Local 1239 held April 28, 1953, contain the following:

"Report by President Butdorff and Bob Donaldson on negotiations with company Monday April 27th. Moved, seconded and carried that we accept the company's last offer and go back to work, providing all employees be taken back to work and all employees be duly notified to report to work. There was much discussion on our accepting the company's last offer before the above motion was voted on. Herb Pappin talked a few minutes on our negotiations with the company since we

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first began negotiations on our present contract up until the present time. George Orr talked on our going back to work and urged it in order to save our union. Leonard Thomas talked on our offer and made regrets for the International Union that we are forced to take the position that we are taking. The motion was then voted on to accept the company's last offer and was carried almost unanimously."

And may it be stipulated that the minutes of a special membership meeting of Local 1239, held on May 3, 1953 contain the following:—

Trial Examiner: These are all special membership

*Testimony of James Simone*

meetings, are they not?

Mr. Davis: Yes, sir.

Trial Examiner: What date in May?

Mr. Davis: May 3, 1953.

(Reading) "President Butdorff read agreement that the committee signed with the company and list of employees who would be taken back on their jobs. Discussion on agreement and list of employees."

May it be so stipulated, since the minutes so provide?

Mr. Martin: It may be so stipulated.

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JAMES SIMONE, a witness recalled by and on behalf of the Respondent, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Davis) Mr. Simone, I have here before me a clipping from the Cleveland Union Leader. What is the Cleveland Union Leader?

A. That is a CIO paper, put out by the workers in the CIO.

Q. In Cleveland?

A. In the Cleveland area.

Q. I have before me a clipping from the Cleveland Union Leader of Friday, July 24, 1953 which, under a sub-heading, says:

"26 former UAW members headed by Raymond Stoddard and Carroll R. Way, who walked through the picket lines during the strike at the Wooster Borg-Warner plant, have been expelled for life from the UAW-CIO, according to representative

*Testimony of James Simone*

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James Simone."

Can you tell me about that?

Mr. Martin: I object on the ground it is irrelevant and immaterial to the issues in this case. It concerns something that happened long after the matters in dispute here occurred.

Mr. Davis: It goes to the question, as I see it, Mr. Buchanan, as to the representation in fact, and the cost of the loss of representation, if any such loss has occurred.

Trial Examiner: We don't know, do we, who constituted the UAW members at any given time, nor are we particularly concerned, it seems to me, with the extent, if any, of the union's majority or the extent of its membership. Now, if 26 former members were expelled then what? If we don't know what the total was—

Mr. Davis: I don't think we can get this from any single exhibit. I think we have to put a good many things together, all bearing ultimately on the question of whether the fulfillment of the purposes of the Act requires a party to bargain.

Trial Examiner: What would we put together to get a sum total from which, deducting 26, we would come up with a total that is less than the majority?

Mr. Davis: Well, I think it will appear, at least so far as the evidence is concerned, that the maximum number of CIO union members in this bargaining unit at any time was around 137 to 140. There may have been more, I don't know, but the

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maximum members—

Trial Examiner: Let me underscore that last statement of yours. There may have been more, you don't know!



*Testimony of James Simone*

Mr. Davis: I don't know. I am saying as far as the evidence is concerned that the maximum number of members participating in this local union was between 137 and 140. There is evidence as to the number of check-offs which bears on the membership.

Trial Examiner: Does it?

Mr. Davis: Yes. And if the representation, if any, was lost by action not on the part of the company or it were contributed to by a voluntary action on the part of the union in expelling a substantial number of its members, I think that certainly has relevance on whether the loss of representation, if any, is one attributable to the unfair labor practices, if any.

Trial Examiner: Objection sustained.

Mr. Davis: We offer to prove by this witness that in July 1953, the Local 1239, UAW-CIO expelled for life from membership in the union, UAW-CIO, 26 of its former members in the bargaining unit at the Wooster Division.

Trial Examiner: The offer is rejected.

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JOHN J. ADAMS, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

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Direct Examination

• • • • •

Q. Mr. Adams, did you participate in certain negotiations on behalf of the Wooster Division of Borg-Warner Corporation with the union in an attempt to reach a collective bargaining agreement during the year 1953?

A. I did.

*Testimony of John J. Adams*

Q. And who were the members of the company's bargaining committee or negotiating team?

A. Mr. Seymour, Mr. Barker and Mr. Winters, and, of course, myself.

Q. Who represented the union?

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A. Mr. Butdorff, Mr. Donaldson, Mr. Huffman, Mr. Snowbarger, Mr. Snoddy and Mr. Pappin, Mr. Roback, and from time to time Mr. O'Malley, Mr. Ullman, Mr. Mooney and Mr. Thomas.

. . . . .

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Q. (By Mr. Davis) Does General Counsel Exhibit 5-C include this language: "This agreement is, therefore, entered into by and between the Wooster Division, Borg-Warner Corporation, .

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herein referred to as the company, and Local Union No. 1239 affiliated with the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO)."

A. Yes.

Q. And that is in the third paragraph of the preamble?

A. That is correct.

Q. Now, Mr. Adams, at the time you prepared that exhibit or that proposal, at the time it was submitted to the union, what was your understanding as to whether or not the UAW-CIO had entered into other contracts where the party to the agreement was identified as a local of that union?

A. Well, I understood that the Union had entered into contracts with employees in a variety of ways. I had seen contracts with the union which had been entered into only

*Testimony of John J. Adams*

in the name of the local. I have seen other contracts which have been entered into only with the name of the International Union showing in its preamble. I have seen contracts where there was a reference both to the local union and the International Union as it is identified here.

Q. And had you seen or did you know of any contracts of this union where the identification of the local or the International or both as the contracting party varied from the language of the certification?

A. Yes. As a matter of fact, Mr. Pappin and I had negotiated

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with each other concerning the contract of another division of the Borg-Warner Corporation. I was familiar with the way the certification read in the case of that division and I had had pressed upon me over a long series of negotiations in that division the claim that the preamble or this identification of the parties should be made in a manner quite different from the certification of the Board in this case.

Q. Was it pressed with some vigor?

. . . . .

The Witness: It would be fair to say that it was pressed over a period of several weeks, and, in fact, was pressed right up to the eve of the threatened strike.

Mr. Martin: You are now talking about Pesco; is that correct?

Mr. Davis: Well—

The Witness: That is correct.

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Q. (By Mr. Davis) And as a result of that pressure was the Pesco contract signed in a way contrary to the certification, so far as the identification of the union was concerned?

*Testimony of John J. Adams*

A. Yes, it was. The certification, if I recall it correctly, refers in some such language as this: "International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 363," and the preamble of this identification of the parties reads, as I recollect: "International Union, United Automobile, Aircraft and Agricultural Implement Workers of America and its Local Union No. 363."

Q. In the course of those negotiations at Pesco with that identification, did Mr. Pappin advance any reasons in the course of bargaining as to why the contract should be executed in a manner contrary to the particular words used in the certification?

. . . . .  
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Q. (By Mr. Davis) If so, what way?

A. Well, yes, he did advance one. The only one I recall his making was that he told us that this contract ought to be in accord with the name of the union and that we shouldn't try to tell them what the name of their union was. He seemed to claim that we were somehow attempting to change the name of their union by suggesting that the contract in the Pesco case should identify these parties in the same fashion it always had in the past. That's the only reason I recall his giving.

. . . . .

Q. (By Mr. Davis) Now, what was the reaction of Mr. Pappin in the course of bargaining at Wooster to the proposal that is contained in General Counsel Exhibit 5-C with respect to the name of the parties?

. . . . .

A. Mr. Pappin really sort of picked up where he left off in the Pesco negotiations, I should say. He made the same

*Testimony of John J. Adams*

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claim here that the way this should be identified is in the correct name of their union, and he said that the correct name of their union was as the union had proposed it in the union's own proposal to which this was a counter-proposal, and he reiterated this argument he had made the Pesco negotiations, that the company ought not to interfere with the name of the union, that they had stated the name of the union correctly in their own proposal.

. . . . .

Q. (By Mr. Davis) What did you say to Mr. Pappin as to why

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the company preferred to use the language contained in General Counsel Exhibit 5-C?

A. Well, I told Mr. Pappin that it was the feeling of management here that the problems arose here, that the people who were involved in those problems lived and worked here, that this was where any problems which arose ought to be settled, that the people down here were responsible people with whom it was most likely that we would deal, and that the management, therefore, felt that the primary emphasis ought to be put on the local representatives of the union. We also pointed out to Mr. Pappin that we did not see how we were interfering with the name of the union in making a proposal of this kind.

Q. In the course of your bargaining did you or any other company representative ever refuse to deal with, bargain with International representatives of the union as well as Local representatives?

. . . . .

A. No, we did not. In the early meetings that we



*Testimony of John J. Adams*

had, Mr. Pappin was the only International representative of the union present and then a little bit later Mr. Roback joined him and I think attended almost all of the remaining meetings we held, and then from time to time there were one or two International representatives present, and I recall one meeting at which there were six International representatives present.

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Q. (By Mr. Davis) Did you or anybody else representing the company in the course of the negotiations ever tell Mr. Pappin that the company had any objection to such contract as might ultimately be agreed upon, being subject to the approval of the International representatives of the Union?

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A. We never objected, no. As a matter of fact—

Q. (By Mr. Davis) Did you ever discuss affirmatively with Mr. Pappin as to whether or not any International representative would, might, or should sign the contract?

A. Yes, sir, I did.

Q. What did you say to him?

A. I told Mr. Pappin—not alone but Mr. Pappin, but there were, as I recall one or two other International representatives of the Union present—

Q. Were those representatives present, too?

A. Yes, they were.

Q. All right.

A. And I stated that we assumed that some one or more Inter-

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national representatives would sign the contract.

*Testimony of John J. Adams*

Q. Mr. Pappin has testified, as you heard, that he stated to the company committee with respect to the third paragraph of the preamble, that the union could not sign a contract with that language in it because it would violate the union's constitution.

Do you recall his making that statement?

A. Yes, I do.

Q. Did you inquire of him as to how it would violate the union's constitution or in what respects?

A. Yes, I did.

Q. What answer did you receive?

A. As best I recall, he said that the union's constitution stated the name of the union, and that that was why this proposal would violate the constitution of the union.

Q. Did you ask him if there were any other reasons why it would violate the constitution, or was that the only answer you got when you asked him?

A. I asked him how this would violate the constitution, and that was the response he made.

Q. Now, I call your attention to Paragraphs 5.6, 5.7 and 5.8 in this proposal, General Counsel Exhibit 5-C, and ask you if you prepared those particular paragraphs?

A. Yes, I did.

Q. Can you tell us how you came to include those paragraphs

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in the proposal?

A. Well, before this proposal was put in writing, so to speak, I met with the other members of the company negotiating committee that I identified, and with Mr. Blythe, and there may have been another man present but I don't recall, and discussed what position the company wished to take in these negotiations, in view of the proposal that the union had made to the company, and Mr. Blythe indicated

*Testimony of John J. Adams*

a number of principles that he thought the company negotiating committee should seek to achieve in the course of the bargaining, and one of the things that he mentioned was the principle, as he put it, I think that this question of whether or not there should be a strike was really related to whether or not the management was doing a good job of managing the business at least so far as its relation with the people were concerned, and that he felt pretty much, as he stated in his own testimony, that if a majority of the bargaining unit were opposed to the particular proposal that was presented at the moment, that management ought to re-examine its own position. If, on the other hand, it developed that a majority of the people were not opposed to management's action in any particular respect, that was a pretty good indication that management was doing a good job.

He said to the company negotiating committee in general that he wanted us to negotiate with the union to achieve some sort of provision which would make it possible for before a

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strike was called to submit the issues to the employees who would be involved in the strike.

\* \* \* \* \*

Trial Examiner: What do you mean when you say "these clauses"? Are you referring to 5.6, 5.7 and 5.8?

Mr. Davis: That is correct, the no-strike ballot.

Mr. Martin: I was wondering about that because you omitted Paragraph 5.4 in these questions. I thought that was the way it was in the original.

Mr. Davis: Before we go any further, for the record, I will ask Mr. Adams a question.

Q. (By Mr. Davis) Mr. Adams, Paragraph 5.4 is really a part of the over-all provisions, which also includes 5.5,

*Testimony of John J. Adams*

5.6, 5.7 and 5.8, does it not?

A. That is correct.

Q. So that what you have previously said with respect to 5.6 to 5.8, inclusive, is applicable to 5.4?

A. That is correct.

Q. And to 5.5?

A. Yes, sir.

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Q. (By Mr. Davis) What did you do in the development of these practices which we have been talking about, after receiving Mr. Blythe's instructions as to the result which he wished to obtain? Did you dream this up out of your head, or did you make some investigation, or what did you do?

A. It was my job to put into words, on paper, the various proposals and counter-proposals that the company intended to present, and so, after Mr. Blythe had outlined his ideas with respect to the principle, I started poking around to see if I could not find some clause or some provisions that went at least part of the way in the direction of the notion that Mr. Blythe had advanced.

I poked around in my own files, and I think in one of the labor services, too, and found several provisions in one place or another, and possibly both, and out of that research or poking I came up with this language here. I think that is largely taken from one contract, or perhaps several of them. I remember that I found one other UAW-CIO contract that had been signed with another company, and since we were dealing with the same union here, it seemed to me to be an awfully good place to start.

Q. When you handed this proposal to the Union, what was the

*Testimony of John J. Adams*

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reaction of the union to these particular sub-paragraphs of Paragraph 5?

A. Well, the union refused to talk about it. They asked me where I had got it, and I told them I had gotten it from another UAW-CIO contract, as best I could recall. I think Mr. Pappin doubted that, and Mr. Pappin just declined to discuss it at all.

Trial Examiner: Do you mean he said he wouldn't discuss it?

The Witness: Yes, sir.

Q. (By Mr. Davis) Was there ever any time during the period of the bargaining meetings, before or after the strike, that the Union representatives, either local or international, discussed with the company representatives this proposal on its merits?

\* \* \* \* \*

The Witness: The answer to your question is that the union did not discuss it on its merits, and Mr. Pappin stated

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in one of our meetings that if I, or if the company, tried to advance the merits of this proposal, that we wouldn't make any progress in our negotiations.

\* \* \* \* \*

Q. (By Mr. Davis) Was there any discussion from the union representatives prior to the strike about these clauses, other than to ask you their source, or was it they wouldn't discuss them at all?

A. There was no discussion. The only thing the union representatives ever said to us, that I can recall, apart from asking where we got this, was to say that they would not discuss it. They stated this was contrary to their constitution, and that it was contrary to the International policy of the Union, and so they wouldn't discuss it.



*Testimony of John J. Adams*

Q. What is the fact as to whether or not they said it was contrary to law, either before or after the strike?

A. I thought you said "before." I don't remember exactly when the point was raised but Mr. Pappin certainly did, at

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some point in our negotiations, state to me that it was his understanding that a trial examiner had a clause which was at least similar to this—and I don't recall how specifically he said it was like this one—but, at any rate, a trial examiner in a case involving the Allis-Chalmers Company had said with respect to a clause like this, when pressed by a company, was an unfair labor practice.

\* \* \* \* \*

Q. Can you tell us about how many items were still in dispute at the time of the strike?

\* \* \* \* \*

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The Witness: Mr. Eddy made up a list of items which were still in dispute, and I don't recall the exact number, but it runs in my mind that there were somewhere between thirty and forty. I recall that on a union sheet which was either brought into us by Mr. Eddy or that the union brought in itself, they had listed pretty close to 30 different disputes which we were still negotiating about.

Q. (By Mr. Davis) Did those include wages?

A. Oh, yes.

Q. Seniority?

A. Yes, there were certain provisions of seniority in it, and there were clauses dealing with the transfer of employees, and I think we were still in dispute about the wording at least of the call-in provisions, and there were a number of fringe items, vacations, holidays and overtime provi-

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sions, and provisions of that kind, which we were also still in dispute about.

Q. How long before the strike on the 20th of March was the last bargaining meeting?

A. The day before.

Q. Had the union representatives then advised you that they were going on strike the following morning?

A. Oh, yes.

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Q. Did you at that meeting the day before have any discussion with the Union representatives about why they were striking or if they were going to strike?

A. Yes, I asked them.

Q. Just tell the Examiner what was said by you and by the union representatives, as you recall.

A. Well, as I recall, the bargaining committee of the employes were all present, those being the five I have named, and I am quite sure that both Mr. Pappin and Mr. Roback were present, and I asked them why they were going to strike the next morning—first of all I asked them if they were really going to strike the next morning, and practically unanimously each of them told me that they were. So then I asked them why, and I remember that Mr. Huffman, I think it was, said that it was poor wages paid at the Wooster Division, and perhaps it was Mr. Donaldson—I am a little bit hazy as to which one said which, and it was either Mr. Snowbarger or Mr. Donaldson spoke about wages, and they were still concerned about some of the seniority provisions, and I believe somebody else mentioned about the vacation plan, because we had a very short seniority roster in our plant, and I know they were all talking to us about having a much more liberal vacation plan in the early years of service of these people.

I recall Mr. Roback told us that the Air Corps would

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never let this plant go on strike, or if it did, the Air Corps

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would promptly come in and see that the plant was reopened.

Q. Were any statements made by the union representatives as to what action the union might take at other divisions of the Borg-Warner Corporation, if the demands were not met?

A. I remember we were told that the Borg-Warner Council was behind this proposed strike, and I don't recall whether it was at the meeting again that Mr. Pappin referred to this \$14 million strike fund which had been made up to support the strike. However, I do recall that Mr. Pappin said that the people up at Pesco were very much behind the strike. I don't recall that any other divisions were identified by name at that time.

. . . . .

Q. I mean, were there further meetings after the strike?

A. Oh, yes.

Q. Even while it was in progress?

A. Oh, yes, several.

Q. Were any references made at those meetings as to what action would be taken at other divisions of Borg-Warner, if the Union's demands at Wooster were not met?

A. Yes. I can't remember at which meetings it was, but I know there was a meeting at which both Mr. Mooney and Mr. Thomas were present, because after—perhaps it was Mr.

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Pappin but I am not sure which one, who said that the entire union was behind this strike, and Mr. Mooney said that there were a lot of unsettled grievances up at the Morse Chain Co. in Detroit.

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Q. May I interrupt? Is Morse Chain a Division of Borg-Warner?

A. Yes, it is. He said he was sure that the fellows up there would be glad to strike over those grievances at this time. Then he turned, I recall, to Mr. Thomas, and said in effect: "You have some unsettled grievances there over the Warner Gear or Warner Automotive", I am not sure which but I think it was Warner Gear. "You have some unsettled grievances over there."

Both of those are divisions of Borg-Warner, and he said that he assumed that Mr. Thomas could bring those to a head over there.

Then I can't recall whether it was Mr. Mooney or Mr. Pappin said that they had voted or determined—I don't recall which—up at Pesco Products in Cleveland to cut off working overtime, and he thought that some of these other divisions would be glad also to refuse to work overtime at those divisions.

Q. Now, Mr. Pappin has testified that at a meeting held I think on April 21, 1953, in the course of bargaining, he asked you and the company committee if the union gave up its posi-

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tion on all the economic and non-economic issues and accepted the company's position on all items except the parties to the contract, as stated in the third preamble of whatever current proposal was then before you, and the secret ballot before a strike in whatever form they were at that time, would the company give up its position on those latter two points?

Will you just state what that conversation was as you recall it?

A. Well, as I recall it, we had been at the meeting for some time before Mr. Pappin made his statement, and he

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began it by saying he would like to ask me a question, if I remember, and then said: "Understand I am not offering this, or I am not saying we would do this, but if the union were willing to concede on all of these other points, what would be the company's position on these two?"

Those are the two I have mentioned, the parties to the agreement, and the no-strike clause.

Q. What was your response?

A. Well, I told him that I thought that the union should accept the proposal as the company made it.

. . . . .

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Q. Were there other proposals than you have enumerated here, which the company made in the course of bargaining, and which the union refused to consider?

A. Yes, there were several.

Q. What were they?

. . . . .

The Witness: I recall there was union seniority in the form that the company had proposed it, as a voluntary revocable check-off, and then there was the question of retention of key personnel by the company, without regard to seniority; and then there was also the question of the flying squadron, so-called.

Q. (By Mr. Davis) What was said by the union men on those

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subjects?

A. On the question of revocable check-off, Mr. Papin told us that that was a strike issue, and that he wasn't going to talk about that.

On the question of the retention of key personnel without regard to seniority, his only reply, that I recall, was



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that that would allow us, Mr. Davis, to keep all of our favorites, and that he wouldn't even consider such a provision in the contract.

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Cross-examination

\* \* \* \* \*

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Q. And you maintained your position with respect to the wording of the third paragraph of the preamble all the way to some time after the strike started, did you not?

A. Oh, no.

Q. Well, tell us when it was that you ever proposed any change in the wording of that prior to March 20th and what was the wording proposed.

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A. In a meeting the week before or the week the strike started, I don't recall which, but in one of the three meetings, I believe, before the strike, we told the union we would be willing to have that preamble read: "Local 1239 of the United Automobile, Aircraft—and so on (CIO)".

Q. You are quite sure of that now?

A. Yes, quite sure.

Q. Well, you are familiar with General Counsel Exhibit 11 which was presented to the representatives of the union on April 17th, are you not?

A. Yes.

Q. And you proposed at that time that the agreement be with the local union 1239 of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, did you not?

A. I did.

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Q. Wasn't that the first time you proposed that language?

A. No. As I just said, in one of the meetings in the week that the strike started we told the union—I think I was the one who said it, as a matter of fact—that if the union objected to the language “affiliated with,” we would be willing to change that, as I have just said.

Q. If you had already proposed that change prior, why did you, in this written proposal, that you presented on April 17, mention this language, if you had already proposed that?

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A. We had never handed the union anything in writing on this point up until that time, Mr. Martin, and we thought to make our position perfectly clear we ought to put that down in writing.

\* \* \* \* \*

Q. (By Mr. Martin) Now, you testified that prior to and at the time you were drawing up this proposal to the union you studied other contracts that the UAW had; is that not correct?

A. That is correct.

Q. And you found some contracts that you said only the name of the local was mentioned?

A. That is correct.

Q. And you found some contracts that you said on the name of the International was mentioned?

A. That is correct.

Q. You found some in which the parties were identified as the Local and the International and the International or this Local. That language was also found?

A. That is correct.

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Q. Did you check the certifications in all those cases to see if there was a certification and if so what the language of the certification was, as well, or didn't you go that far?

A. No, because I had this Pesco experience personally, myself, and I knew that at least in that instance the union had not considered the certification as being decisive as how the parties in the contract should be identified.

Q. Well, that contract at Pesco, now that you have adverted to that, had existed for a period of some seven or eight years in which the parties to the agreement and part of the union were identical in language to the language of the certification up to 1952; is that not correct?

A. That is right.

. . . . .

Q. (By Mr. Martin) In other words, to make this clear, the union was certified about 1943 or 1944 at Pesco. Is that the time the certification was issued by the Board?

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A. Approximately that. I don't remember that.

Q. About that date.

And in 1943 or 1944, whenever the first contract was entered into, through 1951, the language identifying the union in the Pesco contract was identical with the wording of the certification which was, "The International Union, Local 363"; that is correct, is it not?

A. Yes, that is correct.

Q. And in 1952 you had these negotiations with the union in which Mr. Pappin participated, in which the question was raised by Mr. Pappin as to changing the language with respect to the union in that agreement; is that not correct?

A. Yes, he asked us to identify the parties in a man-

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ner quite different from the certification, and when I asked him about that he said that this matter was taken care of by their constitution.

Q. But that is the time the question was raised, in 1952, and as a result of those negotiations you then changed the language as has been read into the record here in that 1952 agreement at Pesco?

A. Yes.

Q. You had no strike at Pesco that year over the negotiations, did you?

A. At Pesco?

Q. Over that issue. I mean you did reach an agreement on

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that issue, did you not?

A. Yes.

Q. Before the strike?

A. Yes, finally we did.

Q. You have used the expression a number of times in your examination by Mr. Davis that the Union would not consider certain things. As a matter of fact, it was the union's position that those things were unacceptable to them? Wouldn't that be a fair expression?

A. Well, that is not what they said. I assume that I had to be governed with what Mr. Pappin said.

Q. You say he used the words that they would not consider these?

A. On two or three occasions, yes.

Trial Examiner: I think the witness testified at various times the union representatives said they wouldn't discuss it.

Mr. Martin: He also used the word "consider."

Trial Examiner: All right.

. . . . .

*Testimony of John J. Adams*

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Q. When you went through the contract the first time, Mr. Pappin did advise you that the proposal of the parties to the agreement was not acceptable?

A. That is not what he said.

Q. What do you say that he said?

A. My best recollection of what he said was that that was not the name of their union, that their union, as it was named in the preamble to their own proposal.

Q. Would you deny that he said he did not agree with your proposal with respect to the parties to the agreement?

A. I don't remember the specific words he used, Mr. Martin.

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Q. Now, with respect to your proposal on the strike ballot, didn't he say that he would not accept that, or that the union would not accept that?

A. My best recollection of what Mr. Pappin said was some such thing as this: "Where did you ever find that?" And I told him that it was in a UAW-CIO contract. He said—I don't remember the precise words he used, but I certainly gained the impression that he doubted that, and I told him I would look it up and tell him.

Q. You are referring to the secret ballot provision or the parties to the agreement with respect to that conversation, now?

A. The no-strike clause.

Q. And the strike ballot proposal which was part of your proposal?

A. Yes.

Q. Would you deny that Mr. Pappin stated when you first went through your proposal that the union would



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not accept your provisions of 5.4 through 5.9 under any conditions? Did he not make that statement or one similar to it?

A. Certainly one similar to it. I wouldn't pretend to remember the words that he used.

Q. Or he did make one similar to that?

A. Yes. I very definitely recall his using some words which led me to believe there were no conditions on which he would

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consider it.

Q. Do you recall whether at the February 16 meeting Mr. Pappin said the union was not in agreement with the third paragraph of your parties to the agreement clause, and that they wanted a contract with the International and the Local, as in their proposal?

A. I do recall his saying frequently that they wanted the parties identified just as they have proposed them. In fact, that was the only thing I ever understood until I think well after the strike had started.

Q. Well, do you recall that after February 16 that Mr. Pappin, after making that statement, said that the certification is in the name of the International and that you thereupon came back and said: "Well, it didn't bother you in your negotiations at Pesco"?

A. At which meeting he said that, Mr. Martin, I couldn't tell you. I do recall his making the statement that the certification was: "International Union, United Automobile, Aircraft and Agricultural Implement Workers of America," because I recall saying to him that the certification hadn't governed his action at Pesco, and I also asked how he explained the condition of his local then if he thought that the certification had to determine this.

\* \* \* \* \*

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Q. Do you recall at that meeting anything else that you can recall about any discussion at that meeting on the non-economic issues, particularly the strike ballot clause and the preamble?

A. I am not sure whether that's the meeting where Mr. Pappin said if we tried to advance the merits of that that there would be no progress after Friday. I recall that we gave them the proposal and I don't recall very much discussion after the proposal was given to the union. That may have been the meeting at which he made the statement I have just reiterated.

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Q. Do you recall the next meeting after that, which was the March 17th meeting, at which Mr. Pappin said that they would not agree to your last offer, referring to your non-economic offer just given them at the previous meeting, and stating that they would not have a contract only with the Local Union?

A. Well, as I remember it, he told us that our non-economic proposal was wholly unacceptable, it covered a number of things, and I don't at the moment recall anything in that that Mr. Pappin was not opposed to.

. . . . .

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Q. He on many occasions, both before and after the strike, said that your proposal violated the certification and also violated the law, and told you he was going to file charges; didn't he?

A. I don't recall whether he ever said that he thought this business of identifying the parties to the contract violated the law.

I do recall his saying at some time or other that the

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way we had proposed it was not in accord with the exact language of the certification. I recall his saying that it was contrary to the International policy, and I recall his saying that it was not the right name of their union. And that in that connection once or twice he referred to the constitution of the union, and as I think I stated earlier, I asked him about that.

. . . . .

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Q. Well, to refresh your recollection, do you recall that at the March 17th meeting that Mr. Pappin said under the Wagner Act the Union had the right to be represented as they chose without interference from the company, and he said the employes had chosen the International union? Do you recall that?

A. I do recall that because I told him we had never, so far as I knew, attempted to dictate or influence them in any way in the selection of their representatives, and I think that was the meeting at which I pointed out that we had never raised any question about Mr. Pappin's or Mr. Roback's presence.

Q. Do you recall that you said in that connection when you answered him that you felt that the company should deal with the people who have the problem here, or words to that effect?

A. I could very well have said that. I suspect that that was pretty much in the same connection that I made those other

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statements about the International representative.

Q. And wasn't that the time you said, without making a definite proposal, that you would have no objection to using the phraseology "Local of the International," without making an actual proposal on it?

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A. Well, I don't remember at which one of the meetings it was, Mr. Martin, but I remember at either this same meeting or one I assume approximately the same time, Mr. Pappin fastened on those words "affiliated with," and said to me something along the line that the local was not affiliated with, that it was all part of the same union, and for that reason I said in some words I don't recall in detail, "If that is the problem, we would be willing to have this read "Local 1239 of the UAW-CIO."

Q. Do you recall at that same meeting on March 17 that you had a discussion about the strike ballot proposal, and to refresh your recollection I will ask you if you recall Mr. Pappin saying that if the company maintains their position with respect to the non-union people voting before the union can strike, that he will file charges? Do you recall that?

A. Once again I recall Mr. Pappin saying that. Whether that was on this particular date or not, Mr. Martin, I wouldn't try to say.

Q. Do you recall that it was before the strike that he said that?

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A. It could very well have been. I certainly won't deny it was.

Q. Do you recall that Mr. Pappin said if they had no other issue they would not be to work the following Monday or whatever day it was that the strike was supposed to take place?

A. He made that statement about several different issues, Mr. Martin.

Q. Do you recall him making that statement with respect to the strike ballot proposal?

A. I think I do along with several others. I recall that in one of the meetings immediately—again I say im-

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mediately in the week in which the strike started—that he referred to this agenda, the items which were in dispute, and stated when any one of them would have been a strike issue he questioned the advisability of trying to go any further with the negotiations.

Q. Do you recall that you then discussed that strike ballot proposal further, that you got into a discussion about the use of the company premises, and you asked him if he objected to the use of the company premises?

A. Yes, I recall asking him that.

Q. Your statement was: “Why not give everybody a chance to vote if it is on the company’s premises,” or something along those lines; do you remember that?

A. I recall asking him that, because I couldn’t understand

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that before.

Q. And do you recall that he said it was interfering with their business, that the union has a right to vote without interference? Do you recall that or words to that effect?

A. Yes, I remember that, because I remember saying to him that “we are not trying to interfere in any way with it,” and then I couldn’t understand what his objection was.

Q. Do you recall his saying that the union doesn’t force anybody to take part in a labor movement, but anybody who wants to can join their union?

A. Yes, I remember his saying that or substantially that.

Q. And you came back and replied with something to the effect that you couldn’t still understand what his objection was to voting on company property?

A. Yes, that is right. • • •



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Q. Don't you have a recollection of this long discussion with him in one of those meetings prior to the strike? . .

A. I certainly do remember attempts to get the union to discuss it and I can remember asking them several questions in an effort to try to find out what their objections to the proposal were.

. . . . .

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Q. (By Mr. Martin) He did discuss it to the extent of saying he thought it constituted interference with the union and their right to vote on issues without outsiders' affecting them? Didn't he do that?

A. Yes, I recall his saying substantially that, and I remember asking him what he meant because I didn't understand how he found that in this proposal.

Q. You were proposing that people who were not members of the union should vote on the question of whether or not there should be a strike?

A. Oh, certainly.

. . . . .

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Q. (By Mr. Martin) Mr. Pappin did explain to you that his objection was that the non-union people were going to vote on this issue and he felt that, he said, at least, that that interfered with the union's right, did he not?

A. I don't know that he put it quite that way. Certainly he objected to people who were not members of the union voting, and I think he said that only the members of the union should vote on that question.

. . . . .

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Q. Do you recall the last meeting prior to the time the strike took place that was on March 19th? Do you recall that?

A. Yes.

Q. At that time you did make a list of the issues on which you were still in dispute; is not that correct, go over it with Mr. Eddy in order to see what you were together on and what you were apart on?

A. I think we did.

Q. You had reached an agreement on a number of issues prior to that time, had you not?

A. You mean—

Q. The period of the various negotiations.

A. Yes, we had reached an agreement on a number of things, a great many. We had been bargaining, I think, for about six weeks then.

Q. Do you recall at that last meeting on the 19th, the day before the strike, that you did have a discussion again about the parties to the agreement?

A. On this last meeting, Mr. Martin?

Q. That is right.

A. I think we did.

. . . . .

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A. I think, Mr. Martin, that that was one of the items on this long, hand-written proposal that they sent into us where they combed—not combed—where they went over a number of the issues that were in dispute.

Q. They made a list of 30, I think, and you made a list of a certain number, both of which have been received in evidence—maybe it will refresh your recollection if we look at that. (handing document to witness.) I think you referred to it in your direct testimony. I don't think you

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had the exhibit before you.

I will ask you to look at General Counsel Exhibit No. 9, Item No. 1 on the first page of that, and it has been stipulated that this was the union proposal given to the company during the course of that March 19th meeting and the proposal does omit the word "its" from in front of the local in the agreement.

A. Yes, sir.

Q. And the union also made a change in their union shop proposal at that time, did they not?

A. May I look at this?

Q. Yes. (Handing document to witness)  
From their original proposal?

A. Yes, they did.

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Trial Examiner: You are referring to which item, now?

Mr. Martin: That would be Item No. 3.

Trial Examiner: Thank you.

Q. (By Mr. Martin) And in lieu of your proposal on the strike ballot, the union proposed a no-strike clause as they originally proposed, did they not?

A. May I look at that agreement, Mr. Martin?

Q. Yes. (Handing document to witness)

A. This is what it says here.

So, obviously this is one of the things that they proposed.

Trial Examiner: What item is that?

Mr. Martin: That would be Item No. 3, the Union Shop should be Item No. 2.

Mr. Davis: Would you read that last question and answer, please?

(The record was read.)

Q. (By Mr. Martin) And do you recall that the language of the union in their proposal with respect to a no-

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strike clause was the identical language in the Pesco agreement?

A. I don't recall, Mr. Martin. I might if I looked at the union proposal.

Mr. Davis: I would almost stipulate that anything in the union's original proposal was identical with the Pesco agreement, more modernized.

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Trial Examiner: Were you referring to the original proposal now as being similar, or did they change it?

Mr. Martin: The union at this meeting again proposed that there be a no-strike clause, which was the original wording of their original proposal on that issue, and that language is the same. I am asking him if he can recall that that language was the same as the language in the Pesco agreement.

The Witness: I particularly recall the language of the Union's proposal deals with, No. 3. I understand that merely to be a statement by the union that it was standing on its original proposal on the subject of strikes.

Q. (By Mr. Martin) And that had a no-strike clause in the original proposal, did it not?

A. I think it did in some form, Mr. Martin, but I don't at this moment know what the form was. You suggested by your question that it was the Pesco language. It wouldn't surprise me to find it was word for word the same, but I don't recall.

Q. You made no proposal at that meeting with respect to any change in the language of your proposal with respect to the parties to the agreement, did you?

A. At that meeting?

Q. That is right, that last meeting prior to the time the strike took place.

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A. Well, I don't remember at which one of the meetings it

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was in this week before the strike that we had the conversations that I have described about "affiliated with," and in the course of which I said "of the," whether it was at this meeting, the day before or the day before that. I frankly don't recall.

Q. Now, as a matter of fact, though, you did not propose it in your counter-proposal with respect to settling the dispute, did you, again on March 19th? I am handing you now General Counsel Exhibit No. 10 for your examination.

A. In this counter-proposal we didn't touch on that, but there are a great many others here we did not touch on; either, Mr. Martin.

Q. Well, I am just asking you, you made no change in your proposal with respect to the agreement on March 19th. Is not that correct?

A. As I said before, I don't recall whether it was at that meeting or at the meeting the day before or the day before that, where we said—I do not want to repeat.

Q. You made a reference there to the word "of" instead of "affiliated," at one of the earlier meetings.

A. It was more than a reference, Mr. Martin. We told the union we would have no objection to changing that language, if that would meet the union's objection.

Q. And the union indicated that that would not meet their objection, is not that correct?

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A. I don't recall that the union made any specific answer.

Q. I think you did testify that you did propose that specific language in the agreement on April 17th, when



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you made the proposal, and I am handing you General Counsel Exhibit No. 11.

A. It was merely putting in writing, Mr. Martin, the proposal we made before. It was, as I recall, no different at all.

Q. This was the first time you proposed it in writing, was it not?

A. This is the first time we put the language in writing, that is correct.

Q. You made no proposal to change any of the language with reference to Sections 5.4 through 5.9 with respect to the strike ballot and the other proposals with reference to voting on the company's last proposal or voting on the termination of the contract at this meeting on March 19th, did you?

A. Mr. Martin, I don't think that we—may I look at this a moment?

Q. Surely, you may examine any of them.

A. My best recollection, Mr. Martin, is that we did not attempt any modifications or changes in the original provisions of that no-strike clause, until we could find some basis for moving into discussion with the union, and I am quite sure that we had made no changes in the language as proposed to the union on the whole strike clause prior to the strike. We

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had no discussions about it which would give me a basis for it.

Q. The union had indicated basically their objection was to the non-union people voting, had they not?

A. I wouldn't say that was the basic objection, they stated to me.

Q. Wasn't that the only objection they gave you in the talks which you had about that clause up to this time, that

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it was interference? I think you mentioned that that was discussed, and the fact that the non-union people voting on a strike constituted interference in the union's affairs.

A. I think Mr. Pappin just flatly stated that they would not consider this because it was contrary to their constitution and to the International policy. I do recall his saying, as I have already testified, that they objected to the non-union people voting, and I attempted to find out why, and I didn't find out why.

Q. You earlier testified that at least at some meeting or other he said it constituted interference. You have admitted, have you not, that during the course of negotiations he said it violated the law, although you could not say that it occurred at any particular meeting?

A. Yes, I remember I stated that.

Q. Basically, as long as the union would not accept the principle of non-union people voting on this question, there was no way to modify it. That was the heart and soul of the

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provision, that everybody in the bargaining unit vote?

A. That was only a small part of it, as I understood it, at least.

Q. You did not consider that as an important part of the provision, that everybody in the bargaining unit was to vote on all the questions?

A. What we were trying to do was to set up a procedure which would operate before a strike came about, Mr. Martin, and, as you have observed, there were several different parts to it. The ballot of the employees was one part.

Q. Well—

Trial Examiner: Did the union object to that procedure?

*Testimony of John J. Adams*

The Witness: The union, Mr. Examiner, told us that they did not think the non-union people should be allowed to vote; to the best of my recollection that was the only specific comment they made about this entire no-strike clause. There were several parts to it.

Q. (By Mr. Martin) I think you have already testified that there was a discussion about voting on the premises, and they stated they objected to that, and after there was some talk you still could not figure out why they were objecting to it.

A. That is right, and I asked them, and I did not understand what their objection was.

Q. But they did object to the use of company premises?

A. Yes, they did.

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Q. Do you recall the meeting at which there were a number of International representatives present, including Mr. Pappin, Mr. Mooney, Mr. O'Malley, Mr. Thomas, Mr. Ullman and Mr. Roback, at the time there were six International representatives present?

A. Yes, I do.

Q. Do you recall that at this meeting Mr. Pappin stated that the union was certified in the name of the International and that the company's refusal to get off their position which they were proposing as to the parties to the agreement constituted a refusal to bargain?

A. He may have stated that.

Q. Would you deny that he stated that?

A. No, I would not deny that he stated that.

Q. Do you recall that he said he also believed the company's position of having non-union people vote on a strike was a refusal to bargain, and that those two points were very fundamental to the union?

A. I wouldn't deny that he said that. He might very

*Testimony of John J. Adams.*

well have said that.

Q. Do you recall that at this meeting Mr. Mooney asked you, how come you wanted a contract to be between the local union and the company, and that you replied: "This is where the plant is. There is where the people are. This is where the people deal with the company."?

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A. I certainly recall making that statement, Mr. Martin. Once again I don't remember the date, but I do remember the meeting with those people, and I know it was at that meeting.

Q. Do you recall making the statement and do you recall Mr. Mooney asking you how come you wanted the contract between the company and the local union, and then you made that remark?

A. I remember attempting to explain why we thought the emphasis should be where we were attempting to establish it.

\* \* \* \* \*

A. I thought I said before, Mr. Martin, that I don't remember exactly how he phrased his question. I do recall his asking why the negotiators were hung up on the question of dealing with the parties to the agreement, and I recall his asking in some way why the company was interested in that, and I recall attempting to explain it to him.

Q. Do you recall at this meeting that Mr. Pappin stated there were two major points involved, and they were the question of whom the contract was to be between, and the question of non-

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union people voting on certain issues, and he also said you had only found one contract where all the people are allowed to vote, and you replied then that the clause was in the Allis-Chalmers UAW contract?

*Testimony of John J. Adams*

A. Is that all one question?

Q. Do you recall that that conversation back and forth took place between you and Mr. Pappin at this meeting with the six International representatives present?

A. I don't remember Mr. Pappin singling out these two points in particular. I certainly remember his talking about them. I certainly remember his saying that they were important as a matter of International policy. I am wondering if you would give me what the rest of the question was.

Q. He made the statement at the end of that that you had found only one contract where everybody was allowed to vote, and you said that that clause was in the Allis-Chalmers UAW contract?

A. I don't know whether Mr. Pappin told me I had only found one or not. It was certainly a fact that I had found more than one. Whether he said that, I don't recall.

Q. You had checked the UAW contract at Allis-Chalmers before that meeting, had you not?

A. I imagine considerably before this meeting. \* \* \*

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Q. To refresh your recollection, do you recall that at the April 17th meeting Mr. Pappin stated that the union would not change its position as to whom the agreement should be with, and that they were still standing on their proposal as to it being with the International and the Local?

A. I have said that a number of times.

\* \* \* \* \*

A. I remember, Mr. Martin, that Mr. Pappin any number of times said that the union would not change its position on those two points. \* \* \*

\* \* \* \* \*



*Testimony of John J. Adams*

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Q. Do you recall that at one of the meetings you stated there had been an awful lot of issues, that is discussions, on these two issues, namely, the strike ballot issue and the parties to the agreement, and it also seemed important to the company, and the company thought it was important to the people at the plant, and it was also important to the union?

A. I certainly recall saying that at one meeting. I remembered one meeting—it may have been this one—where I stated to the union in effect that I thought there had not been any discussion on the merits of either one of these, and I thought we should discuss the merits of them. This may have been that meeting.

Q. There was a lot of discussion about them, was there not, in which the union expressed its position, even though you say they did not discuss the merits?

A. I wouldn't say there was a lot of discussion about that, Mr. Martin. On the contrary, they were disposed of pretty fast. Mr. Pappin would state his opposition and advance one or two of

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the reasons I have indicated, and the thing would be passed by in pretty short order.

Q. Do you recall at this April 17th meeting—

Trial Examiner: When was this last meeting about which the witness told us in his last answer? Did it refer to any given time?

The Witness: From the beginning of negotiations, Mr. Examiner, up to some time substantially after the strike had started. That is the period in which I meant to cover by that answer. I am sorry that I can't recall at which one of the meetings it was after the strike had started, but I do recall at one of those meetings stating to the union that

*Testimony of John J. Adams*

I thought there had been no discussion on the merits of these issues, and that I thought there should be.

Trial Examiner: This was after the strike started?

The Witness: Yes, sir.

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Mr. Davis: And as evidence of that, even after the strike started, he said to Mr. Pappin: "I think we ought to discuss these on the merits because they have not had any merit discussion to date."

That is the impression I got.

Trial Examiner: My impression was similar, Mr. Davis, but I was afraid that I had gotten that impression erroneously.

Let us put it this way: You have told us that these two issues were disposed of pretty fast and Mr. Pappin would express opposition and you would pass on to something else?

The Witness: Yes, sir.

Trial Examiner: When did that happen?

The Witness: From time to time, Mr. Examiner.

Trial Examiner: Did that happen from the beginning of the negotiations at various dates through to some time after the strike commenced?

The Witness: From time to time, it would. Perhaps I could explain what I mean by saying in this collective bargaining process, we start somewhere, and generally speaking you will work down through the various issues that are presented by the negotiation, and when you go through once you will start back and go through them again, and depending upon how much discussion there is on any particular point, it may be a day or several days or perhaps a week before you ever get back to an issue which was

*Testimony of John J. Adams*

by-passed the first time.

. . . . .

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Q. (By Mr. Martin) Do you recall that at this April 17th meeting, at which there was a discussion of the Allis-Chalmers trial examiner's decision, that Mr. Pappin said that the union was not going to be in a position of violating the law, and that the Allis-Chalmers case indicated inconsistency on non-union people voting on the strike issue, as a violation of law?

A. Of course that did not make any sense to me, Mr. Martin.

Q. Did he say that, whether it made sense or not?

A. I do recall his saying that because I recall saying I did not understand it.

Q. You did not understand that the trial examiner held that that was a violation of law? Is that the part that did not make any sense to you?

A. I did not understand that there was anything whatever

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that prohibited the union from agreeing to that, and I told Mr. Pappin so. I pointed out that particularly it did not make any sense to me, when it apparently had happened in some other contracts.

. . . . .

Q. Mr. Pappin had told you prior to this that he was going to file charges on those issues in discussion, had he not?

A. Oh, sure.

Q. Then you knew that they had charged the company with refusing to bargain, and you felt the charges were groundless?

*Testimony of John J. Adams*

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A. We had been bargaining for about eight weeks.

Q. You did state to him that you thought the charges were groundless?

A. I certainly did.

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Q. At this meeting on this proposal it was also proposed that the question as to whether or not the agreement should be amended, modified or terminated was subject to secret ballot by all the employees of the union? Is not that correct?

A. Is that the language of that paragraph, Mr. Martin?

Q. Yes, sir, Paragraph 5.9.

A. Yes, that was or is what it says.

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Q. (By Mr. Martin) As I say, can you recall whether or not you got that clause, or did you think this one up yourself?

A. Frankly, I don't remember, Mr. Martin. I recall that we were very much concerned that we had not been able to get any discussion started about this clause that would explore its ramifications, and we were trying to figure out some way to get some discussion going on this. Mr. Pappin had complained about this Allis-Chalmers case. We were trying to put this into some form that would get the union to explore this with us and see whether or not there was not some way that we could work one out.

I recall that we tried to make it perfectly clear that what we were aiming for was a qualified no-strike clause, if you will, and that it was to follow a pattern procedure, and we tried to clarify our intent a little bit on this in an

*Testimony of John J. Adams*

effort to see if we could not get the union to get into the merits of this thing with us and see if we could work out something.

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Q. (By Mr. Martin) Do you recall, after giving this proposal to the union, that subsequently Mr. Pappin did state to you that—first, Mr. Pappin did make a counter-proposal on

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the language of the parties to the agreement. Do you recall that at this meeting? Did he propose language similar to the original Pesco language?

A. Yes, he did. I do recall that.

\* \* \* \* \*

A. I asked Mr. Pappin how he interpreted the proposal which he had made, because I told him that I thought we ought not to settle on language which he was going to read one way and we another way. I thought that was a formula for disagreements later.

Mr. Pappin replied, as I recall it, that this made it the International's local, and I asked him if that did not put the primary emphasis on the International, and I don't recall whether Mr. Pappin described that or did or what he said, but what he did say gave me the very strong impression that that was the way he was interpreting it.

I recall asking him why we didn't turn it around, if there was not any real difference. Certainly I know that our conversation was inconclusive.

Q. You did have quite some little conversation about this

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proposal that day, didn't you?



*Testimony of John J. Adams*

A. What proposal?

Q. His proposal, and your proposal on the language of the parties to the agreement.

A. I don't recall any more than what I have just described.

Trial Examiner: When you speak of "turn around," what do you mean?

The Witness: Reverse the order. To be specific, Local 1239, UAW-CIO, instead of "UAW-CIO, Local 1239."

Q. (By Mr. Martin) Do you recall, Mr. Adams, that Mr. Pappin said—

Trial Examiner: Will you pardon me just a minute, please?

Mr. Martin: Yes, sir.

Trial Examiner: Referring to turning around your proposal, as you have just described it, did that refer to any change in the company's position?

The Witness: I suppose it depends on the point of view, Mr. Examiner. Technically, it involved the omission of the words "of the", that is to say, instead of reading "Local 1239 of the UAW-CIO," it read "Local 1239, UAW-CIO." Mr. Pappin served it up to us "UAW-CIO, Local 1239."

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A. I do recall his saying that he had proposed the Pesco language, and I do recall his referring to my statement of two or three days earlier, and I didn't really think that as seriously as he appeared to be about the discussion a day or two earlier, because I did not think that he would even accept the Pesco language. Whether Mr. Pappin stated it in just the words you used, I don't recall, Mr. Martin, but certainly he referred to the conversation we had had two or three days earlier. I know that.

*Testimony of John J. Adams*

Q. Do you recall that you replied that the company thought the contract should be made between the Wooster Division and

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the Local, and that you said this at that time after he made that proposal?

A. Again, Mr. Martin, I assume I said something like that but whether I used those precise words, I do not know.

Q. You would not deny that you said that?

A. I may have said it.

Q. Do you recall saying that if there was no difference between that and what the company proposed, why did Pappin object?

Mr. Davis: What do you mean by that?

Mr. Martin: Pappin's language and your language. You asked Pappin why he was objecting to the language.

The Witness: I do recall that. I said a moment ago, Mr. Martin, that I sensed either from something Mr. Pappin said or the way he spoke of it, that he and I were not reading this quite the same way, and I recall asking him about that.

Q. (By Mr. Martin) Do you recall when you asked him that he said it was his position that International Local Union and the use of the word "International" first indicated that the International was possessive of the Local? Did he make such an explanation to you?

A. Some such explanation as that, yes.

Q. Then did you come back and say to him that the thing which was getting everybody mixed up there or thrown off was that the union was interpreting that as being in effect primarily a

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contract with the International, while you felt it should be primarily a contract with the Local?

*Testimony of John J. Adams*

A. Again I assume I said something approximately like that because several times we had said to them that we thought the emphasis should be put with the local representatives, as I have said before.

Q. Do you recall when you had a discussion about the strike ballot provision at that meeting, Mr. Pappin stated that if the company would give them a union shop, that he would give further consideration to your strike ballot proposal?

A. Yes, I recall his saying that.

Q. Do you recall that you then replied that this was the first contract, or words to that effect, and that you would only give a union shop if the union over a period of time showed their responsibility, that they earned it, or something along that line?

A. I may have said that, Mr. Martin, because I could not understand why he could trade about this, if it were really illegal or in violation of their constitution, as he had told me in other cases.

Q. In other words, you did not understand the connection, or so far as you understood it, there was no connection whatsoever in a union shop, where everybody would belong to the union after a certain length of time, and a strike ballot proposal, in which everybody in the bargaining unit could vote?

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A. No, I did not, because as your question partially indicated, there was always that 30-day period in which there would be non-members of the union on the company's policy in the bargaining unit, and I still could not understand what the connection was between the two points.

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Q. (By Mr. Martin) Are you now positive of the fact

*Testimony of John J. Adams*

that when Mr. Pappin on April 21st made the statement, to which you have testified, with respect to the union being willing to drop its position with respect to all the other items in controversy, if the company would drop its position with respect to the parties to the agreement and non-union people voting, that he said that he was not making that as an offer?

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A. I am quite sure of that, Mr. Martin.

Q. You are very positive, are you?

A. Yes, I am quite positive about that because I recall being mystified a few moments later by Mr. Mooney requesting a recess and asking me to get the picture of Frank Murphy in my eyes and go talk to Harry Blythe and come back with a proposal, and I didn't quite see where to go. The only thing I could conclude out of it was either just before or just after this the suggestion was made that we arbitrate the issues which were still in dispute, and I concluded that what they wanted was to have us respond on this point, whether or not we would be willing to arbitrate the items which still remained in dispute. There was quite a flock of them, 15 or 20 by that time, or perhaps a few more.

Q. Can you tell us why you particularly recall this statement, which you apparently definitely recall, when most of the other statements I have asked you about you could not recall except in effect, or something similar, or you said you would not deny it?

A. The reason I do is because we had some discussion about whether or not the union had made some sort of proposal to us, and it seemed to us to be inconsistent, we thought that they had made a proposal which was certainly inconsistent with the idea that we would arbitrate.

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*Testimony of John J. Adams*

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Q. Do you recall Mr. Mooney at this meeting asking you if the Company had no other counter proposal or no other offer, and your saying that you didn't?

A. I do remember saying that. I remember that I said I thought the proposal should now come from the Union; that we had made one, and we were still waiting to drive on from there.

Q. Do you recall Mr. Mooney stating that you were forcing them into the position where the International could not agree with you, as long as you were taking the position that non-union people were going to vote, and that this was an un-American and undemocratic proposal? Do you recall him stating that, or words to that effect?

A. Words to that effect. I remember that there was a reference to international policy, and whether it was in that immediate connection or not, I do not know. I recall that in particular because I remember being intrigued about how it was undemocratic to vote.

Q. Do you recall when you made mention and had a talk about international policy, that Mr. Pappin did say that it was not just a violation of International policy, but it was a violation of the certification and a violation of law?

A. At this particular meeting?

Q. Or any other meeting where that policy came up.

A. I have said two or three times that he mentioned it, and he may have mentioned it at this meeting.

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Q. (By Mr. Martin) I think you testified, Mr. Adams, that in your discussions with Mr. Blythe, the purpose or objective of the Company in the strike ballot clause was to make sure, if possible, that before there would be a



*Testimony of John J. Adams*

strike, a majority of the employes in the unit would approve that action. Is that correct?

A. Yes, sir.

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Redirect Examination  
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Q. (By Mr. Davis) • • • What is the fact, Mr. Adams, as to whether or not that at that time, at the time of the April 17th meeting, proposal was made there would be an agreement reached between the parties as to the term of the contract, if any, and that that would be agreed upon?

A. No, I do not think there had been any agreement about the term of the contract.

Q. What is the fact as to whether or not there was still pending union demands for reopening for modification or amendment during such term as might be agreed upon, if it were a long term?

A. Well, the Union had told us that they did not want wages firm under the contract, for even as long as one year, and they asked that they have the right to reopen wages at any time, and to negotiate about them.

Q. What relation, if any, was there between those proposals and that situation and the modification or amendments which you made to your proposal on this point on April 17, 1953?

A. Well, the Company was in the position where there were a number of different provisions of the contract which had not been settled yet or agreed upon between the company and the union, and there had been no real exploration of this no-strike provision to which you referred. It was the Company's problem

*Testimony of John J. Adams*

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to try to get some discussion and some negotiation about both this no-strike clause, the term of the contract, and what issues might come up during the term of the contract, for example, wage rates or new production standards. That would be wage rates on particular jobs or new production standards, or this other demand of the Union that there would be a right at any time to negotiate about wages. It was necessary to try to get a discussion of all these things together so that the Company and the Union together could fit the operation of a no-strike clause into whatever agreement should ultimately be reached about the term of the contract or the other matters that both you and I have mentioned.

Q. The Union proposal on parties to the contract, from start to finish, you proposed that the Union be identified as "UAW-CIO," without repeating the long name, the International and its Local 1239? Is not that true?

A. Up until some point after the strike had started.

Q. Until the time Mr. Pappin made the proposal which was similar to the Pesco certification?

A. That is right, up until that time his position had always been the same, with the single exception they left out the word "its" just before the strike.

Q. So that when they dropped out the International Union's proposal, the proper name description was given and then Local 1239?

A. That is correct.

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Q. I think we have agreed here that Local 1239 of the UAW-CIO was not in those words included in the certification. There is no question of that, is there, Mr. Martin?

Mr. Martin: That is right.

Q. (By Mr. Davis) Did the Union ever propose to you

*Testimony of John J. Adams*

that the Union party to the contract should be stated as the International Union; United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO?

A. No, I don't think they did.

Q. Did you ever ask them about that?

A. No.

Q. Did you ever suggest to them that their proposal violated the certification?

A. Yes. I pointed out to them that it did not seem to me that even their original proposal was in the words of the certification. I mentioned that two or three times, along with what I have heretofore mentioned.

Q. Did Mr. Pappin, or any other member of the Union bargaining committee, respond to that?

A. Yes, Mr. Pappin every once in a while would say that this was the question of the name of their Union, and we ought not to try to tell them what the name of their Union was.

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Q. Is it or is it not a fact that Mr. Pappin said that the International representatives could not even take part in the negotiations, without the consent of the local representatives of their Union?

A. Mr. Pappin and two or three other international representatives said that.

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Q. (By Mr. Davis) And you said you did not understand it. Did you ever suggest, or did anybody else on your side of the table ever suggest that non-union members should be permitted to attend or to vote at Union meetings, when Union matters were to be discussed?

*Testimony of John J. Adams*

A. No. On the contrary I told Mr. Pappin, personally, that there was no desire on our part to interfere with Union membership meetings at all, and that I assumed that whatever their procedure was, they were perfectly at liberty to follow it, and we were not interested even in talking about that.

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**TRANSCRIPT OF TESTIMONY****May 18, 1954**

\* \* \* \* \*

HOMER BUTDORFF, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

**Direct Examination**

\* \* \* \* \*

Q. What is the present nature of your job?

A. Foreman in the automatics and turret lathe department.

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Q. And before you became a foreman, did you hold an office in Local 1239 of the UAW-CIO?

A. I did.

Q. What was that office?

A. President of the Local.

Q. Were you a member of the Union bargaining committee which negotiated with the company in 1953 with respect to a contract?

A. I was.

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Q. Now, Mr. Butdorff, it has been agreed here in the record that on April 27, 1953, a meeting was held between you, Donaldson, Snowbarger and Huffman, representing the Union, and Mr. Seymour, Mr. Winters and Mr. Barker, representing the Company, and it has also been agreed that there was a special meeting of the membership of Local 1239 on April 25, 1953, and the minutes of that meeting



*Testimony of Homer Rutdorff*

show that you appeared before the meeting and recommended to those present that a vote be taken as to whether or not the people would go back to work, and that after discussion a motion was made, seconded and carried at that meeting that the membership instruct the committee to contact the company on Monday, April 27th, and get the best offer possible.

Do you recall both of those membership meetings and the meeting with the company on the 27th?

A. Yes, sir.

Q. Before you appeared before the membership meeting, and where your committee was instructed to contact the company, and you discussed what should be done at that meeting with any International representatives of the union?

A. Yes.

Q. With whom did you discuss it?

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A. I probably couldn't remember all the names but I know that there was Thomas, Roback, I believe Pappin, but I am not sure of that, and I believe Mooney and Batten.

Q. And what was said? What did they say to you and what did you say to them, according to your best recollection?

A. Well, the general theme of it was we were to go in and try to get the best offer we could possibly get from the company, and that they figured that was the best thing for us to do.

Q. (By Mr. Davis) Now it has also been agreed that you, Donaldson, Huffman, Snowbarger and Snoddy met with Seymour, Winters and Barker on April 30, 1953. Is it

*Testimony of Homer Buttdorff*

not a fact that either at the meeting of April 27th or the meeting of April 30th—and if you remember which, you will let me know—the company representatives gave to the union representatives a proposed memorandum of settlement, by which the strike would be

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settled, if it were signed?

A. Yes, they did, I believe it was at the April 30th meeting.

Q. Now did you have any discussion after that with any representative of the union, either a local representative or an International representative, or both, about the taking of that memorandum of settlement to Detroit for approval by the union officials there?

A. Did I have any discussion?

Q. Yes, did you have any conversation.

A. I did, after it happened.

Q. Just tell me what that was, and with whom you had the conversation, and what was said.

A. I do not know how it came about but Jack Snowbarger—

Trial Examiner: Wait a minute.

The Witness: This was the evening of the 30th. Jack Snowbarger, Bert Batten and Jimmy Simone and Russ Masetta took this memorandum of settlement and went to Detroit with it, and I did not find out about it until after they had left, and I was pretty well disturbed because I didn't know anything about it.

Mr. Martin: I ask that his answer go out about that.

Mr. Davis: All right.

Q. (By Mr. Davis) How did you learn that they had gone to Detroit? Did you find out after they had come back?

*Testimony of Homer Butdorff*

A. No, I found out after they had left.

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Q. Was Roback an International representative of the Union?

A. To my knowledge, he was.

Q. Did you have any conversation with Roback or anyone else after these men returned from Detroit?

A. Yes, I had a conversation with Thomas and Roback the next day.

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Q. (By Mr. Davis) You said you had a conversation after these gentlemen returned from Detroit with Thomas and Roback?

A. That is right.

Q. Will you tell us what you said to them and what they said to you about this matter?

A. Actually nothing was said about what took place in Detroit, outside of the fact that—I couldn't remember the exact words in any case, but it was said—

Trial Examiner: Who said what now?

The Witness: Thomas or Roback said that this was taken up for the approval of the International Executive Board.

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Q. (By Mr. Davis) Were you advised by any member of the Executive Board in Detroit that the Executive Board had approved the signing?

A. No, I can't say that I was. Thomas did say on Saturday, before we went in actually to sign it.

Trial Examiner: Saturday was what date?

*Testimony of Homer Butdorff*

The Witness: The 2nd of May. He did say that he thought that that was the only thing to do.

Q. (By Mr. Davis) That is, to sign it?

A. To sign it, so that we could all go back to work, or as many as possible, and start building our local again.

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Q. Did you tell the International representatives that the people felt they ought to go back in to work?

A. No, I did not.

Q. Did you make any comment or say any words about how the Local people felt?

A. Yes, I did.

Q. What did you say about it?

A. I said I didn't think I could talk the Local people into going back to work; that I had spoken the other way so long that I didn't think it was fair to me to reverse my decision and turn around and try to get them to go back to work, after trying to keep them from going to work so hard.

Q. Which one, or any of them, told you to go in and present the matter to the Local membership to go back to work?

A. It would be hard for me to say which one did. There were several International representatives present there, and it would be awfully hard for me to say just which one did. I don't know that I could honestly say it.

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Q. You say that you did not say a word about the fact that there was considerable sentiment amongst the Local people themselves going back to work?

A. That I did not say?

Q. You did not say anything about the fact that you

*Testimony of Homer Butdorff*

felt there was a lot of feeling amongst the Local people that they wanted to go back to work?

A. No, I don't believe I did.

Q. You are positive of that?

A. No, I am not positive of that.

Q. A lot of the people had already gone in to work, had they not?

A. Oh, yes.

Q. And a lot of these people were members of your Local, were they not?

A. Yes, they were.

Q. As a matter of fact, did you not know that there was a considerable sentiment, and a strong feeling amongst a lot of people, that they needed the money and wanted to go back to work?

A. Of the people who were still out on strike, I do not believe that was so.

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Redirect Examination

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Q. Was on April 27th. Now, did you have this meeting with the International people at the Hilltop before you went in to talk to the Company, or afterwards?

A. Well, first I said before and then after, and now I am sure it was before, because we didn't have any intention of going in and talking to the Company until the International called us out there to the Hilltop that night and asked us to

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talk the membership into going back to work. So, I would say it was before.

Q. So, without reference to particular dates, you talked



*Testimony of Homer Butdorff*

to them at the Hilltop before you went in to talk to them?

A. That is right.

Q. And when you and Snowbarger went to Mr. Seymour's house was that after you talked to the people at the Hilltop or before?

A. It was after I talked to the people at the Hilltop.

\* \* \* \* \*

## Recross-examination

\* \* \* \* \*

625

Q. So, what was discussed there, then, did you discuss whether to meet with the company, or what, that they should meet with the company alone or what was the fact?

A. Yes, it was suggested to us—no, actually the International suggested that we go to the membership meeting and advise them or, rather, to try to get a motion that we go back to work, or that we get—well, however, that motion stated it, that was it.

\* \* \* \* \*

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A. Also that we go back to work. There seemed to be that we wouldn't all be taken back to work and that we had lost the strike and the best thing to do would be for as many of us to get back into work as possible so we could start building the Local again.

\* \* \* \* \*

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Q. Then you went in on the 27th and you talked about the provisions of the agreement further?

A. Yes, we did.

Q. And then you came back to the membership on the 28th?

Mr. Davis: That would be Tuesday.

*Testimony of Homer Butdorff*

The Witness: Yes.

Q. (By Mr. Martin) And the 28th, when this was taken up before the membership, you still did not have the company's final written proposal that was finally reduced to writing in the memorandum settlement, did you?

A. To my recollection, we did not.

Q. You got that on a Thursday?

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A. On a Thursday, yes, I believe so.

Q. And you did not have another membership meeting again after you had this meeting of the 30th, did you?

A. Did we have another membership meeting?

Q. Yes, prior to signing the agreement.

A. I couldn't honestly say. I think we did.

. . . . .

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NORMAN E. SEYMOUR, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

. . . . .

Q. And in what capacity have you been employed at the Wooster Division?

A. As manager of manufacturing.

. . . . .

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Q. Now, after May 5, 1953, Mr. Seymour, did Company representatives meet from time to time with Union representatives to discuss questions arising under that contract such as

*Testimony of Norman E. Seymour*

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grievances and the like, and did you discuss problems arising between the company and the union not covered by the contract?

A. Yes, we had periodic meetings with the union representatives.

\* \* \* \* \*

Mr. Martin: The International representatives did appear in and participate in matters arising out of and under the contract, and I believe at the third stage of the grievance procedure they participated and asked Mr. Simone if that was not correct. That is correct, isn't it, Mr. Simone?

Mr. Simone: That is right.

\* \* \* \* \*

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Mr. Davis: \* \* \* "May it be stipulated that during the period from May 5, 1953 until March 20, 1954 the company representatives met from 12 to 15 times with union representatives, including both local and international representatives, to discuss grievances and other matters arising under the contract, General Counsel Exhibit No. 13, and that during that period the Company met with the Union representatives, both local and International, at all times that such meetings were requested for the purposes above indicated."

Mr. Martin: We will so stipulate.

\* \* \* \* \*

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Q. (By Mr. Davis) Mr. Seymour, prior to the month of August, 1953, it is a fact, is it not, that the Borg-Warner Corporation operated in the City of Cleveland a division known as Cleveland Commutator Division?

*Testimony of Norman E. Seymour*

A. That is true.

Q. Where was the plant located?

A. I believe it was on 67th Street.

Q. It was a separate division, was it not?

A. Yes, it was.

Q. And some time along in the summer of 1953 consideration was given to moving that division to Wooster, Ohio, and making Mr. Blythe president of that division as well as the Wooster Division; is that correct?

A. That is right.

Q. And as a part of the planning for the movement of that division, did the company have negotiations with the union representatives at Wooster, that is, the local representatives from Local 1239, and the International representatives about whether or not the employees of the Cleveland Commutator Division would be represented in some way by the UAW-CIO?

A. Do you mean prior to August?

Q. No, I mean as a part of the planning about moving the division, and before the Cleveland Commutator Division was actually moved, did you have such talks with the Union?

638

A. Yes, we did.

Q. I am right, am I not, that the Cleveland Commutator Division production employees were not represented by any union before the movement to Wooster took place?

A. No, they had no union in Cleveland.

Q. It is a fact, is it not, that the union representatives at Wooster, that is, the UAW-CIO people, asked for bargaining rights on behalf of the employees of the Cleveland Commutator Division, or representation rights, or however you want to say it?

*Testimony of Norman E. Seymour*

A. Representation rights.

Q. Was that question discussed between you and other company representatives and the union representatives?

A. Yes, it was.

Q. Is it a fact that it was finally agreed, after discussion between you, that the Cleveland Commutator employees would be added to the Wooster Division bargaining unit for representation purposes?

A. Yes, that was agreed on.

Q. In connection with those negotiations, did you discuss with the union representatives what, if any, seniority the Cleveland Commutator Division employees would hold in the bargaining unit?

A. Yes, we had quite a little discussion on seniority.

Q. Was it the position of the union representatives that

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the Cleveland Commutator Division employees should come into the Wooster Division bargaining unit without any prior seniority?

A. That is exactly what they wanted.

Q. And did the company finally agree to that?

A. Yes, we finally agreed to that, even though we were opposed to it, especially in two cases.

Q. But that was discussed back and forth and you did agree to accept the union's position?

A. Yes, we did.

Q. Just one other question, I think, or one other subject very briefly.

During the period between May 5, 1953 and March 20, 1954, did the union representatives request that the contract be reopened to discuss wages?

A. Yes, they did request that it be reopened.

Q. And the company declined to reopen the contract,



*Testimony of Norman E. Scymour*

did it not?

A. That is right.

Q. But the subject of that reopening was one of the subjects discussed in your meetings?

A. That is true.

Mr. Davis: That is all, Mr. Martin. \* \* \*

\* \* \*

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Q. (By Mr. Davis) During the strike the company determined to eliminate some of these bench hand jobs?

A. Yes, I did.

Q. How many did you eliminate?

A. I eliminated five.

Q. So that at the end of the strike there were only seven bench hand jobs open?

A. That is correct.

Q. How many bench hand jobs do you have in the tool room today?

A. It is either six or seven.

\* \* \*

Q. (By Mr. Davis) Prior to the strike, also, did you have in your tooling set-up an outside contractor?

A. An outside contractor?

Q. Continental Tool Company, or something like that.

A. We had an outside source for tool design for our plant.

Q. That is what I mean.

A. That is right.

Q. And were their services dispensed with during the strike, too?

A. Yes, they were.

Q. From a business or operating standpoint, why did you

*Testimony of Norman E. Seymour*

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determine to eliminate the outside contractor's service and the five bench hand jobs you referred to?

A. You are referring to Continental, are you not?

Q. Yes.

A. Continental was getting caught up on their work, and, furthermore, we had lost some of the business that we had received from Pesco because we were unable to fulfill deliveries, and that is one of the reasons why I eliminated five bench hands out of the tool room. Our experimental work was not as great as it was before the strike, so that I had no use for 12 bench hands,

\* \* \* \* \*

Recross-examination

\* \* \* \* \*

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Q. (By Mr. Martin) Will you examine these documents? I will hand you these documents which were received in evidence, being stipulated as the complement of the tool room for the week prior to the strike, March 19th, and following the strike through August 15th, of those in the tool room who returned to work, and see if you can point out to me any non-strikers who were bench hands who were eliminated.

Trial Examiner: I wonder whether it is clear to you, Mr. Seymour. The question is referring to the five who you testified were dropped, were they all strikers?

The Witness: I will have to check it.

Trial Examiner: All right.

650

The Witness: Yes, I believe they were all on strike.

Q. (By Mr. Martin) In selecting the five individuals who were to be eliminated, you paid no attention to the

*Testimony of Norman E. Seymour*

seniority of any of the individuals with the company, did you?

A. No.

Q. And you paid no attention to their ability?

A. They were replaced during the strike.

Q. What do you mean "replaced?" You did not hire anybody to take their place during the strike, did you? You did not hire any new bench hands?

A. I do not think we hired any new bench hands during the strike but there were bench hands who came back to work during the strike.

Q. In other words, you had 12 bench hand jobs before the strike. Maybe we can shorten it. That is correct?

A. Right.

Q. You eliminated five jobs?

A. Yes, sir.

Q. Seven of the bench hands who originally went out returned while the strike was on, and prior to the settlement agreement of May 5?

A. No. I think two or three of them came back the day that they returned to work, when the strike was settled.

. . . . .

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Trial Examiner: They all went out and Hosfeld returned on March 31st?

Mr. Martin: That is correct.

. . . . .

Q. (By Mr. Martin) You did not pay any attention to any of the provisions of the agreement which you signed there with the local with respect to seniority in selecting the individuals who would return, who were to have the actual jobs, the seven bench hand jobs; that is correct, is it not?

*Testimony of Norman E. Seymour*

A. When the strike was settled and the men came back to work, as I stated previously, I think there were two or three bench hand jobs open, and those were filled by seniority.

. . . . .

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Q. Brettin, Kauffman and Juchum had more seniority than some of the bench hands you retained?

A. I would agree to that.

. . . . .

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A. We did not have seven bench hands when we started back to work and the jobs were filled strictly on seniority.

Q. You did take some of those who were out on strike back?

A. Yes, and we took them back by seniority.

. . . . .

Q. (By Mr. Martin) In other words, you took the two or three oldest in seniority who were still with you, who had still been out on strike up to the settlement agreement being signed?

A. That is right.

Q. And you filled those two or three jobs with the highest in seniority?

A. That is right.

Q. That is amongst the seven or so who were still out?

A. That is correct.

Q. But you retained of those who came in to work during the strike individuals with less seniority than Brettin, Juchum, and Kauffman?

A. Right.

. . . . .

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Mr. Davis: That is right, there were three retained who had less seniority than Brettin, Juchum, Kauffman, Bates and Tinkey, in that order.

. . . . .

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Mr. Davis: May it be stipulated that Jack Snowbarger, if called as a witness, would testify that he and Batten, an International representative, took the memorandum of settlement which had been tendered to the Union by the Company, to Detroit, Michigan, the night it was received from the company, and that while Snowbarger remained in the hotel, Batten took the memorandum to the UAW-CIO International headquarters, and that after Batten had spent some considerable time at the headquarters they returned to Wooster with the memorandum of settlement?

. . . . .

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Mr. Martin: I will so stipulate.

. . . . .

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Mr. Martin: . . . It is further stipulated that along with the petition received in evidence as Respondent's Exhibit 28, the UAW-AFL filed with said petition authorization cards purporting to be from employes of the Wooster Division in the number of 135.

. . . . .

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Mr. Martin: The following stipulation I am also willing to enter into at the request of Respondent, this being worded by myself at Respondent's request, and that if Carl Smigel, the Director of Region Three of the Inter-



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national Union, United Automobile Workers of America, AFL, the Petitioner in Respondent's Exhibit No. 28, which has been received in evidence, were called as a witness, he would testify that on or about the 14th day of May, 1954, he submitted to the Regional Office in connection with Respondent's Exhibit No. 28, 47 additional authorization cards purporting to be authorization cards of employees of Wooster Division of the Borg-Warner Corporation.

I will so stipulate at Respondent's request and also object to the materiality of that stipulation.

Trial Examiner: Same ruling: The stipulation is noted.

\* \* \* \* \*

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Mr. Davis: May it be stipulated that as a matter of practice the National Labor Relations Board, through its Regional Offices, has conducted representation and decertification elections on the employers' premises whenever this has been possible except in exceptional circumstances, and has encouraged employers and employees' representatives to consent to the holding of said elections on the employers' premises except in unusual circumstances?

May it be further stipulated that during the period Union security elections were required by Section 8 (a) (3) of the Labor-Management Relations Act, as a matter of practice, the National Labor Relations Board, through its Regional Offices, conducted such elections on the employers' premises whenever this was possible except in exceptional circumstances, and encouraged employers' and employees' representatives to consent to the holding of such elections on the employers' premises except in unusual circumstances?

And may it be further stipulated that as a matter of practice, that the National Labor Relations Board, through its Regional Offices, has conducted on the employers' premises except in exceptional circumstances elections to deter-

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mine whether or not the authority of employes' representatives to make union security agreements should be rescinded and has encouraged employers' and employes' representatives to consent to the holding of such elections on the employers' premises

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except in unusual circumstances?

\* \* \* \* \*

Trial Examiner: The objections for the reasons previously

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noted are overruled and the stipulations are noted on the record.

\* \* \* \* \*

Mr. Davis: May it be stipulated that the preamble to Respondent's Exhibit 11 reads as follows:

"This agreement entered into this 24th day of November, 1952, by and between the Ingersoll Steel Division, Borg-Warner Corporation, New Castle, Indiana, hereinafter referred to as the Company, and Local No. 729, of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Affiliated with the Congress of Industrial Organizations, hereinafter referred to as the Union."

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\* \* \* \* \*

Mr. Martin: I will so stipulate \* \* \*

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\* \* \* \* \*

Trial Examiner: Without at this time determining the relevancy or the effect to be given to these references to Respondent's Exhibit 11, the objection is overruled and the statement will be accepted on the record. The same ruling

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is made with respect to Mr. Martin's similar objection to the other contracts we referred to.

\* \* \* \* \*

Mr. Davis: May it be stipulated that the preamble to Respondent's Exhibit 12 reads as follows:

"Allis-Chalmers Manufacturing Company (hereinafter called the 'Company'), and Local 248 of the United Automobile, Aircraft and Agricultural Implement Workers of America,

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affiliated with the C.I.O. (hereinafter called the 'Union'), as the exclusive bargaining representative for the employees covered by this agreement, agree as follows:"

That the date of execution of said contract was the 30th day of June, 1950, and that Article 23 of said contract reads as follows:

"This agreement shall remain in force until July 1, 1955, inclusive, and thereafter from year to year, unless, within the ten (10) days period immediately preceding the sixty (60) days prior to any date of termination, written notice of termination is given by either party.

"If a new agreement cannot be reached within the sixty (60) days period, then the agreement shall be automatically extended for an additional thirty (30) days.

"If a new agreement cannot be reached within such thirty (30) days period, the Union shall have the right to conduct a strike for any lawful demand in the area of collective bargaining, provided (1) a duly supervised secret ballot strike referendum is held (after said thirty (30) days period) on Company premises during working hours and at Company expense and (2) a majority of the employees in the bargaining unit have voted in such referendum in favor of a strike.

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"However, either party may reopen this agreement on July 1, 1952, after having given thirty (30) days' prior written notice to the other party, for the sole purposes of

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negotiations upon (1) the authority of the Impartial Referee to review discipline cases as provided in Article XIII; and, (2) wages, but not including pensions, group life insurance, health, accident, and disability benefits (Mutual Aid Society), vacation pay, holiday pay, and general wage adjustments, that is, (a) adjustments based on the cost of living; (b) adjustments based on an annual improvement factor; and (c) any other adjustment (either in cents per hour or percentage) which applies uniformly to every employe.

"All provisions of this agreement shall remain in full force and effect after reopening as above provided, except that the employes may strike in support of any such reopening demand, provided (1) a duly supervised secret ballot strike referendum is held (after said thirty (30) day period) on Company premises during working hours and at Company expense and (2) a majority of the employes in the bargaining unit have voted in said referendum in favor of a strike.

\* \* \* \* \*

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Mr. Davis: It is stipulated and agreed that in a contract entered into on August 20, 1952 in which the parties are identified in the preamble as the Terre Haute Works of the Allis-Chalmers Manufacturing Company, hereinafter referred to as the Company, and the United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the CIO, hereinafter referred to as the International, and its Local 1164, hereinafter referred to as the Union, Article 21 provides as follows:

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"254. This agreement shall remain in force until July 1, 1955, inclusive, and thereafter from year to year unless, within the ten (10) -day period immediately preceding the sixty (60) days prior to any date of termination, written notice of termination is given by a party.

"255. If a new agreement cannot be reached within the sixty (60) -day period, then the agreement shall be automatically extended for an additional thirty (30) days.

"256. If a new agreement cannot be reached within such thirty (30) -day period, the union shall have the right to conduct a strike for any lawful demand in the area of collective bargaining, provided (1) a duly supervised secret ballot strike referendum is held (after said thirty (30) day period on Company premises during working hours, and at

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Company expense and (2) a majority of the employees in the bargaining unit have voted in such referendum in favor of a strike.

\* \* \* \* \*

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It is further stipulated and agreed that this contract provides for the election of union officers by secret ballot by the union on the company premises, and that the contract is signed by two individuals on behalf of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, and its Local 1164, and further, it is signed by five individuals on behalf of Local 1164, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO.

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May it be further stipulated that the contract was entered into on the 5th day of August, 1950, in which the parties are identified in the preamble as follows:

"Allis-Chalmers Manufacturing Company, hereinafter.



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called the company, and Local 1027 of the United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the CIO,"

and which is signed by the company and that the union signature shows six local representatives and two International representatives signing on behalf of Local 1027, United Automobile, Aircraft and Agricultural Implement Workers of America, Affiliated with the CIO, and that this contract contains similar provisions to the contract previously referred to as having been entered into which are entirely similar to those provisions of the contract entered into by Allis-Chalmers Manufacturing Company, Terre Haute Works, on August 20, 1952, which have just previously been read into the record?

Mr. Martin: It may be so stipulated.

Mr. Davis: May it be agreed that the last stipulation is also applicable to the following contracts executed on dates indicated in which the parties and signatories are as indicated?

Mr. Martin: It may be so stipulated.

\* \* \* \* \*

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The same stipulation with respect to contract between The Pittsburgh Works of Allis-Chalmers Manufacturing Company and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the CIO, which is signed by four persons purporting to act for the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO.

\* \* \* \* \*

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Mr. Davis: It is further stipulated in the contract with Allis-Chalmers Manufacturing Company, Gadsden Works,

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dated August 15, 1950, the union party to the contract is described as Local 487 of the United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, and that the contract is signed on behalf of said union parties so identified by three members of the Local Union and one International representative. This contract also has provisions similar to the other Allis-Chalmers contracts which have been identified.

Mr. Martin: I will so stipulate.

Mr. Davis: It is further stipulated and agreed that the Allis-Chalmers Manufacturing Company in various of its works and divisions has contracts containing provisions similar to those previously enumerated as being contained in its West Allis Works contract with Local 248 of the Automobile Workers Union with the United Farm Equipment and Metal Workers, the Union of Electric, Radio and Machine Workers, CIO, the Independent Engineers and Draftsmen's Association, and the United Electrical, Radio and Machine Workers of America (UE), the International Brotherhood of Firemen and Oilers

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(AFL), the Patternmakers League of North America, the International Brotherhood of Electrical Workers (AFL), the United Plant Guard Workers of America or Local Unions of such.

Mr. Martin: I will so stipulate.

Mr. Davis: It is further stipulated and agreed that there are currently in force in the Dominion of Canada collective bargaining contracts with the Union, in some of which—

Trial Examiner: When you say the Union you mean the International?

Mr. Davis: I mean the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO. (—in some of which the union party to

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the contract is described solely as an identified local of said union and any others of which the union party to the contract is identified as the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, without reference to any local, but that in those contracts where the local is not identified as a party—

Trial Examiner: Wouldn't you say with respect to all of them, both the local and the International?

Mr. Davis: No.

—the contracts are signed by the local as well as by International representatives, and in those contracts where the union contracting party is identified only as the

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local, there are signatures on behalf of the International Union as well as representatives of the Local Unions.

Trial Examiner: On behalf of the International Representatives as well as the Local representatives?

Mr. Martin: It may be so stipulated either as Mr. Davis suggested or as the Trial Examiner suggested, or both.

\* \* \* \* \*

Mr. Davis: May it be stipulated that Respondent's Exhibits Nos. 29 through 36 for identification, both inclusive, are each an example of a pre-strike ballot provision contained in collective bargaining contracts between the parties indicated on each of the exhibits.

Mr. Martin: I will so stipulate and ask if Respondent's counsel will stipulate that there are other contracts between labor organizations and companies in this country that do not contain any type of strike ballot voting proposal?

Mr. Davis: We so stipulate.

\* \* \* \* \*

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Mr. Martin: May it be stipulated by and between the

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parties at the meeting that the settlement agreement was signed, the company presented to the Local bargaining committee a withdrawal of charge and asked Mr. Butdorff, the President of the Local, to sign a statement withdrawing the charge that had been filed with the National Labor Relations Board, Eighth Region, that Mr. Butdorff advised the company representatives that he had not signed the charge, that he did not feel he had any authority to withdraw it but that he would sign it as requested by the company and that thereafter he did sign it and sent it to the Eighth Region, and it was signed by him as president of the Local?

Mr. Davis: That was signed pursuant to the memorandum of settlement?

Mr. Martin: That is right. He signed it as President of Local 1239.

\* \* \* \* \*

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## INTERMEDIATE REPORT AND RECOMMENDED ORDER

Case No. 8-CA-830

Buchanan, Trial Examiner: The complaint herein, as amended at the hearing, alleges that the Company has violated Section 8 (a) (5) of the National Labor Relations Act, as amended, 61 Stat. 136, by insisting on a collective bargaining agreement with the Local<sup>1</sup> only and to the exclusion of the International; by insisting on a pre-strike written ballot to be conducted on company premises among all employees in the unit on acceptance of the Company's "last" or any succeeding offer; by insisting on a vote on company premises among all employees in the unit prior to amendment, modification, or termination of any agreement reached; by bargaining with and entering into an agreement with the Local alone; by threatening and urging employees to abandon a strike; and by promising benefits to, threatening, and urging employees to abandon the International;

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Section 8 (a) (3) by refusing, because they had engaged in concerted activities, to reinstate to their former or sub-

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<sup>1</sup>The charging party as designated in the caption is herein referred to as the "International"; the term "Local" will be used to designate Local Union No. 1239 of the International; and "Union" will refer to the International and the Local jointly. These designations are here made without implication or indication of any decision concerning the relationship of the respective entities (or entity) and the effect thereof. Such matters are considered infra. (My statement at the hearing of intention to employ such designations to distinguish among the different entities and the combination met with no better or other suggestion.) It should be noted at this point, so that the Company's answer will be understood, that the Company alleges that the International carries on its activities through this Local and the other local unions; acts of the Local, as indicated in the record, are referred to in the answer as acts of the International.



*Intermediate Report and Recommended Order*

stantially equivalent employment 36<sup>2</sup> employees who had applied for reinstatement or had otherwise indicated that they were available for work after a strike which had been caused by and prolonged because of the Company's unfair labor practices; and Section 8 (a) (1) by all of the alleged acts enumerated above.

The answer, as amended at the hearing, denies the allegations of unfair labor practices, and alleges that the Union has failed and refused to bargain in good faith; that the employees named returned to work, quit, or otherwise lost their right to reinstatement; that the Company signed an agreement with the International, and that thereby all claims of unfair labor practices were waived and extinguished; that the International agreed to and did withdraw the unfair labor practice charges herein, and that the Board is therefore without jurisdiction; that the question of return of the alleged discriminatees was covered by the agreement between the Company and the International, which the Company has performed, and that all claims have thus been waived or discharged; and that the International has recognized the agreement and bargained thereunder.

A hearing was held before me at Wooster, Ohio, from May 11 to 18, 1954, inclusive. Pursuant to leave granted to all parties, briefs were thereafter filed by the General Counsel and the Company, the time to do so having been extended.<sup>3</sup>

I would commend counsel and the parties on their representation of the evidence and submission of the issues. Although the hearing was hard fought, it was without rancor or bitterness. Issues raised are novel,

<sup>2</sup>Listed in Appendix A attached hereto. The allegations with respect to George D. Orr and William Dilgard were dismissed on motions by the Company and the General Counsel respectively at the close of the latter's case.

<sup>3</sup>The record is hereby corrected on proposal in a stipulation between the Company and the General Counsel, and as set forth in Appendix B attached hereto.

*Intermediate Report and Recommended Order*

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and examination was skillful; yet concessions and stipulations were so readily forthcoming that the record and the time consumed were literally minimized.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

**Findings of Fact (with reasons therefor)**

**I. The Company's business and the labor organizations involved**

It was admitted and I find that Wooster Division, referred to herein as the Company, is an unincorporated division of Borg-Warner Corporation, an Illinois corporation which owns various divisions which in turn operate plants in various states; that the Company has been and is engaged at its plant in Wooster, Ohio, in the manufacture, sale and distribution of fuel and hydraulic pumps; that in 1953 it shipped products valued at more than \$100,000 to points outside the State of Ohio; and that it is engaged in commerce within the meaning of the Act.

Whatever the relation between the International and the Local, I find that each is a labor organization within the meaning of the Act. The Local occupies such status if, as claimed by the Company, it is one of a number of local unions organized by the International, and the local union through which the International carries on its union activities at the Company. Although one may be part of or subsidiary to the

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other, each is an entity and a labor organization. (In an application for a temporary injunction, the Company referred to both as "voluntary associations.")

*Intermediate Report and Recommended Order*

## II. The unfair labor events

## A. Outline of events

I shall confine myself to those facts upon which rest the opposing points of view and the possible findings and conclusions which can be made.

It is admitted that the following employees at the Wooster plant constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees including plant clerical employees, stock and tool handlers, excluding all production control department employees, industrial and product engineering department employees, statistical quality control department employees, timekeepers, checkers, laboratory employees, all office employees and office clerical employees, nurses, professional employees, guards and watchmen as defined in the Act.

In a secret ballot election conducted by the Board on December 11, 1952, a majority of the employees in the said unit who voted in the election voted in favor of the International as their representative for the purposes of collective bargaining, and on December 18, the International was so certified by the Board. (The Local was thereafter chart-

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ered.) No question has been raised concerning the Company's obligation to bargain during the period covered by the events which we shall consider: the issue is whether that obligation has been fulfilled.

After some meetings earlier in the month in connection with grievances, the Union on January 23, 1953, presented proposals to the Company. Thereafter at a series of 20

*Intermediate Report and Recommended Order*

meetings between February 2 and April 21, various proposals and counterproposals were discussed. The Union was represented at these meetings by International representatives and by Local representatives; the Company by its Bargaining Committee. Four meetings were held between April 27 and May 5, no International representatives attending. We need not enter upon a detailed exposition of the negotiations at these meetings. We shall of course confine ourselves to the allegations of the complaint, the elements cited by the General Counsel in support of those allegations, and any factors in defense referable thereto. For example, it would not be fair or proper to consider as in bad faith the suggestion in the testimony, but not alleged, that the Company representative proposed that the agreement be in the form of the Company's agreement covering the Pesco Products plant of the corporation, but that when the Union indicated a willingness to accept that, it being pointed out that in its Preamble the other agreement in fact included the International as a party, the Company refused; this case was not tried on the issue of submission of any such proposal and subsequent withdrawal thereof as indication of bad faith. That there was give and take and that the Company bargained in good faith<sup>4</sup> is not questioned except for certain proposals, referred to herein as

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the recognition and employee ballot proposals, and the Company's insistence thereon. The Company is not here charged with bad faith while merely appearing to bargain in good faith; hidden intent is not claimed. The allegation

<sup>4</sup>While a finding of refusal to bargain may indicate that the negotiations were not conducted in good faith, any appearance of good faith here noted is without reference to such a finding and is not intended to prejudge the issues to be considered.

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here is that the Company made overt unlawful demands, and that such illegality convicts it of refusal to bargain.

On January 23 and February 2, 1953, the Union submitted to the Company a set of so-called economic and non-economic proposals which had been approved by the members of the Local. On February 9 the Company submitted its noneconomic proposal, which after a statement of intent, provided as follows:

This Agreement is therefore entered into by and between the Wooster Division, Borg-Warner Corporation (herein referred to as the Company) and Local Union 1239, affiliated with the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO).

### 1. Recognition and Description of Unit

1.1 The Company recognizes the Union as the exclusive bargaining agent for the employees which it represents in matters pertaining to rates of pay, wages, hours of work and other conditions of employment, during the term of this Agreement.

1.2 The certification dated December 18, 1952 of the National Labor Relations Board provides that the Union represents the following employees: . . .

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### 5. Responsibilities of the Company and the Union

5.4 It is agreed by both the Company and the Union that it is their mutual intent to provide peaceful means for the settlement of all disputes that may arise between them. To assist both parties to carry out this intent in good faith, it is agreed that it is essential that three basic steps be taken with respect to each dispute, in order to permit the greatest oppor-



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tunity for satisfactory settlement: such steps shall include (1) a clear definition of the issue or issues, officially made known to all employees in the bargaining unit; (2) a reasonable period of good faith bargaining on the issues as defined, after such issues have been made known to all employees in the bargaining unit; and (3) an opportunity for all employees in the bargaining unit to vote, by secret, impartially supervised, written ballot, on whether to accept or reject the Company's last offer, and on any subsequent offers made.

5.5 It is mutually agreed that the definition of issues referred to in Section 5.4 will include the proposals and counter-proposals of each party; that the reasonable period of good faith bargaining referred to in Section 5.4 shall be at least 30 days, with full discussion of the issue taking place during that period; and that the secret written ballot referred to in Section 5.4 shall be supervised by a representative of the United States Mediation and

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Conciliation Service, or by some other party mutually agreed upon by the Company and the Union. The Company and the Union further agree that such a ballot shall be taken on Company premises, at reasonable and convenient times, and with proper safeguards, similar to those observed in NLRB elections, being taken to insure freedom of choice and a fair election.

5.6 It is further mutually agreed that if a majority of employees in the bargaining unit reject the Company's last offer, and the Company makes a subsequent offer within 72 hours from the time the results of the election are known, another secret, impartially supervised, written ballot will be taken within the following 72 hours.

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5.7 It is further mutually agreed that the question of whether or not this Agreement is to be terminated is one of the issues subject to vote by such a secret, impartially supervised, written ballot.

5.8 It is further mutually agreed that during the life of this Agreement the Company will not engage in any form of lockout, and the Union will not cause or permit the members of the bargaining unit to take part in any sit-down, stay-in, or slow-down, or any curtailment of work or restriction of production or interference with production, or take part in any strike or stoppage of any kind, or picket the plant, on any matter subject to arbitration, and not in any other matter, until all the bargaining procedure outlined in this Agreement, (including the Grievance Procedure, where applicable, and in all cases the three steps outlined in this Article), have been completely fulfilled.

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Pappin, an International representative, told the company representatives that the clause naming the parties "violated the certification of the Board" and the union constitution, and that the agreement should be with the Local and the International. As for Section 5.4 et seq., he announced, the other union representatives agreeing, that the Union "wouldn't accept it under any circumstances."

At a meeting of the Local on February 15, Pappin reported on the Company's noneconomic proposal. The recognition and employee ballot clauses were objected to, and a motion was passed giving the local executive board authority to call for a strike vote under the provisions of the constitution when the board deemed such vote necessary. At a meeting on the following day the Company

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was apprised of that motion. The discussion then appears to have been confined to the recognition clause, Pappin arguing that it "violated" the Board's certification, while Adams, for the Company, replied that a leaflet signed by the local union at the Pesco plant and passed out by the Union at the gates guaranteed autonomy to the Local and that the agreement would be with the Local. It may here be noted that it is at least arguable whether the statement in the leaflet, "You will have your own charter, your own local union, your own contract and seniority and officers elected from your own plant," excludes a contract between the Company and the International and indicates that the contract would be with the Local only. The Pesco contract, entered into October 25, 1952, presumably for 3 years, provides as follows:

This Agreement entered into between the Pesco Products Division, Borg-Warner Corporation of Bedford, Ohio (hereinafter referred to as the "Company") and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America and its Local 363, UAW-CIO, (hereinafter referred to as the "Union").

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In any event, the effect of such statement on the rights of the parties is considered infra. (Where understanding can be attained of the general position of the parties without reference to each of the points raised by them, duplication will be avoided by omission of those points in this chronological recital and by reference to them only in the later evaluation.)

The Union presented its own counterproposal at the next meeting, on February 18. Like the Union's original proposal, this referred to the International and the Local

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jointly, and the discussion did not get beyond the recognition clause. Arguing the point in detail, Pappin noted that Adams had represented management in the Pesco negotiations, and that it had there been agreed to include both the International and the local union; Adams maintained that this was different situation.

After several more meetings, Pappin reported to the membership of the Local on February 27 that the Company was maintaining its position with respect to the recognition and employee ballot clauses. As a tactic which they were persuaded would aid negotiations, the members of the Local voted for "strike action" with the understanding that negotiations would be carried on for 2 weeks, that a federal mediator would attend, and that a further report would then be made to the Local, at which time a vote would be taken whether to accept the company proposal or to strike.

There followed more meetings and more discussion, and on March 11 the Company submitted its economic proposal. On March 12 came the Company's settlement proposal on noneconomic items. It was there declared that "The Union demands that the International be the principal part to the contract." This appears to indicate that the Company recognized, that whatever the status of the "principal" party,

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the Union did not exclude the Local as a party to the contract. The proposal declared further, referring to and scoring the phrase "your own contract" in the leaflet referred to supra, that "the local Union should have the right to make its own agreement" and that "the Company urges that this section be settled by permitting the local Union to sign its own agreement in its own name." It is not clear from these latter statements whether the Com-

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pany was here urging that the Local alone be recognized or that it be named as one of the representatives of the employees. But the testimony is that on March 4 Pappin had told Adams that the Union "could not accept an agreement with only the local union as a party to the agreement," and Pappin testified further, by contrast, that Adams said "repeatedly, many times, that he thought it should be with the local union." (Blythe, the Company's president and general manager, testified at the hearing: "The position of the Company was at all times the agreement would be with the local.") Other statements will be noted infra, prior to a finding in this connection, as showing the respective positions of the parties. Whatever the Company's position, it was firm: on March 13 Pappin asked whether "the Company (was) still going to stand on (its) position" on the recognition and ballot clauses, to which Adams replied, "Now, Herb, I don't want to be misunderstood, the Company is very serious on these important points." The Union's understanding of the Company's position after 6 weeks of negotiation is set forth in a list which was distributed at the plant gates on March 14 and which purported to set forth the differences between the Company's last offer and the agreement entered at the Pesco plant. On the issue of recognition, there is a clear contrast between the Company's offer of an agreement to be entered into between itself and the Local, and the Pesco agreement with both the International and the local union there.

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At a meeting of the Local's executive board and stewards on March 15, the various differences were discussed and it was voted to turn down the Company's last proposal and to give the bargaining committee the right to call a strike on March 20 if a satisfactory contract were



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not concluded. The matter was later that day placed before the membership of the Local, who adopted the recommendation. While the proposition was carried unanimously at the first of these meetings, the vote at the later one was 83 to 51; the Respondent brought out that the Union's constitution requires a two-thirds vote.

On March 17 the parties met again. Pappin informed the company representatives that the members of the Local had met and had authorized the bargaining committee to strike on the issue of the parties to the agreement even if that were the only issue in dispute. He also "stressed" that a strike would be called on the balloting issue alone.

Other issues were considered during negotiations on March 18. On the following day the Union submitted a counterproposal, as did the Company. The latter's is not material to the issues before us, and beyond its submission was not considered at the hearing. With respect to parties, the Union's proposal included the International and Local, making only an insubstantial change by omitting the word "its" which had appeared before "Local." Continued was the Union's original no-strike proposal, which was the same as that in the Pesco agreement. The Union also proposed a modified union shop and irrevocable checkoff. In all, 30 points were covered, but the Company's reply was that the proposal was not satisfactory or was not worth considering, and that the Union should accept the Company's last proposal. The meeting ended with the Union declaring that a strike would begin at 7 o'clock the next morning, March 20, but that it was willing to continue to meet with the Company, and the latter stating that the plant would remain in operation.

The strike did commence on March 20, but the parties continued to meet during its pendency. The first of such

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meetings was held on March 31. While many of the pending issues were discussed, Pappin told Adams that the recognition and employee ballot questions "were fundamental to the settlement of the dispute." With respect to the recognition clause, Adams referred to "the first agreement at the Pesco local union," entered into as of May 15, 1947, which read as follows:

This agreement entered into as of May 15, 1947 between Pesco Products Division, Borg-Warner Corporation, of Cleveland, Ohio, hereinafter referred to as the company, and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local Union 363-CIO, hereinafter referred to as the union.

(This clause is in contrast to that in the later and presumably current Pesco agreement quoted supra.) Adams asked, "Why don't you propose that?" and Pappin replied, "I will give it my consideration." Pappin did not, however, propose such a provision at that time; as will be seen, he made such a proposal at the next meeting. During the course of the meeting on March 31, O'Malley, the International's regional director for that region, declared, "If the company thinks we are going to sign an agreement with the local union, they are wrong." The meeting closed after a company representative said that the Company had made a fair noneconomic and economic package offer which the Union should accept; and O'Malley said that he believed that the Company did not want to settle the dispute, that there was no point in negotiating further, and that he would not negotiate unless the Company advised that it would make the International a party to the agreement, eliminated its insistence that nonunion employees be included in a prestrike ballot, and alter its position on wages.

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At the next meeting, on April 17, Pappin again declared that he would not "under any circumstances" accept the Company's provision concerning parties. (He may here have been referring to a so-called change which the Company submitted and which is set forth infra.) There followed a discussion of the legality of the Company's proposed balloting provisions. Adams stated that the Company was interested in those two points, which were important to both the Company and the employees, and that he had found "six of these agreements in the U.A.W. that were with Local Unions." Pappin's declared position was that the recognition clause violated the Union's constitution and the Board's certification, while the ballot proposal violated the Union's constitution and the law. At this same meeting was submitted a proposed modification by the Company of Sections 5.4 through 5.8 of its noneconomic proposal of February 9. This modification, referred to as Sections 5.4 through 5.9 was as follows:

5.4 The Company will not institute a lockout during the period of this Agreement.

5.5 (a) The Union agrees that there will be no strike, work stoppage, interruption, impeding, or slow down, of work, with respect to any matter upon which an impartial arbitrator has jurisdiction and authority to rule, or with respect to any other matter until the procedure hereinafter set forth in this Article has been exhausted. No officer or representative of the Union shall cause, instigate, aid or condone any such activity. No employee shall participate in any such activity.

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(b) If any employee shall violate the provisions of this Section, he shall be subject to discipline which may include discharge. The discipline or discharge of any employee may be the subject of a grievance under the grievance procedure set forth in this Agreement.

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5.6 It is agreed by both the Company and the Union that it is their mutual intent to provide peaceful means for the settlement of all disputes that may arise between them. To assist both parties to carry out this intent in good faith, it is agreed that the procedure referred to in Section 5.5 (a), in the case of a matter on which the impartial arbitrator does not have jurisdiction and authority to rule, shall consist of four basic steps to be taken with respect to each dispute, in order to permit the greatest opportunity for satisfactory settlement; such steps shall include (1) exhaustion of the first three steps of the grievance procedure where the dispute involves a grievance; (2) a clear definition of the issue or issues, officially made known to all employees in the bargaining unit; (3) a reasonable period of good faith bargaining on the issues as defined, after such issues have been made known to all employees in the bargaining unit; and (4) an opportunity for all employees in the bargaining unit to vote, by secret, impartially supervised, written ballot, on whether to accept or reject the Company's last offer, and on any subsequent offers made.

5.7 It is mutually agreed that the definition of issues referred to in Section 5.6 will include the proposals and counterproposals of each party; that the reasonable period of good faith bargaining referred

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to in Section 5.6 shall be at least 30 days (less the actual number of days, if any, but not to exceed 15 days, during which the issue or issues in dispute were being processed through the grievance

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procedure), with full discussion of the issues taking place during that period; and that the secret ballot referred to in Section 5.6 shall be supervised by a representative of the United States Mediation and Conciliation Service, or by some other party mutually agreed upon by the Company and the Union. The Company and the Union further agree that such a ballot shall be taken on Company premises, at reasonable and convenient times, and with proper safeguards, similar to those observed in NLRB elections, being taken to insure freedom of choice and a fair election.

5.8 It is further mutually agreed that if a majority of employees in the bargaining unit reject the Company's last offer, and the Company makes a subsequent offer within 72 hours from the time the results of the election are known, another secret, impartially supervised, written ballot will be taken within the following 72 hours.

5.9 It is further mutually agreed that the question of whether or not this Agreement is to be amended, modified or terminated is one of the issues subject to vote by such a secret, impartially supervised, written ballot.

It will be noted that, like the earlier proposals, this called for a vote on company premises by secret ballot among all employees in the unit (whether members of the Union or not, the Company refusing to accede to a



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union-shop clause) on whether to accept or reject the Company's "last" offer and on any subsequent offers made. But whereas the Company had previously proposed that the contract was not to be terminated by the Union or a strike called except after a secret ballot as described, amendment and modification of the agreement were now also brought within the ballot provision."

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At this meeting of April 17, the Union declared its willingness to consider a secret ballot vote if the Company would agree to a union shop, the latter to satisfy the objection to having nonunion employees vote on questions which the Union must consider. But the Company refused, and stood on its secret ballot provision. The Union did not otherwise insist on a union shop.

In an additional paragraph, the Company at the same time proposed substituting "of" for "affiliated with" in its recognition provision, so that the provision would now read:

This Agreement is therefore entered into by and between the Wooster Division of Borg-Warner Corporation (herein referred to as the Company) and Local Union 1239 of United Automobile, Aircraft and Agricultural Implement Workers of America (herein referred to as the Union).

<sup>5</sup>The language of this last item presents an intriguing picture of the Company seeking amendment or modification of an agreement, but compelled to continue it without change when it is voted down by the employees! The provision concerning voting on the Company's offers prior to any strike, and the facts of business life which in this situation do not call for expertise, indicate, however, that the Company's right to terminate any agreement would not depend on an employee vote. One may conclude, therefore, that while the Company could not compel acceptance of any change which it desired in the contract, it would not be obliged to continue the contract without the change; the employee ballot provision limits only the Union's action with respect to amendment, modification, or termination, and of course, strike.

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Adams testified that this had been suggested to the Union orally earlier in the week of the commencement of the strike.

In connection with the issue of parties, and referring to Adams' question at the meeting of March 31 why Pappin did not propose the language of the first Pesco agreement, the latter stated, "We now propose that the parties to the agreement, which would be the International, Local 4239." The witness testified that the Board certification at the Pesco plant was of "International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 363, CIO," the 1947 contract was so worded, and, adopting Adams' suggestion, he now proposed the same language with substitution of 1239 for 363. As noted supra, the case was not tried on this issue, and no finding of bad faith will be made in connection therewith. Conversely, I now find, to avoid later reference and repetition, that the Union's willingness to adopt the Company's suggestion of language different from the certification but patterned after another agreement where, as Adams testified, the Preamble referred to both the International and the local union, did not constitute a waiver of the Union's right to demand recognition in the form in which it was certified. Nor would any waiver or loss of right be retroactive as to exculpate the Company from any refusal to bargain which may theretofore have occurred.

The Company's refusal to recognize and sign an agreement with the International was again manifested at the next meeting, on April 21. Pappin called attention to the Union's proposal at the previous meeting for the language in the earlier Pesco agreement, but Adams' objection was that he "was trying . . . to interpret

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into that language that the agreement was primarily with the International Union." Emphasizing the strike issues, Mooney, assistant to a vice president of the International and director of the Borg-Warner Council, pointed out that the Company

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was preventing an agreement by excluding the International as a party and requiring that nonunion employees vote. While, as noted, I am not repeating the various requests as they were time and again renewed and discussed, an indisputably clear description of the respective positions is found in the following extract from Pappin's testimony:

I said to Mr. Adams: "I want to ask you this question: If we will concede on all of the non-economic proposals that you have previously proposed and to your position in its entirety on economics, will you agree to make the International a party to the agreement and to eliminate your position that non-union employees will vote?"

Mr. Adams stated: "I think you should take it as it is."

Now, Mr. Mooney said: "Why don't you go see Mr. Blythe and have a discussion with him and have a little recess and see if you can come up with a fair proposal?"

Mr. Adams said: "We think ours is a fair proposal."

Here was another suggestion by the Union that it might modify its position as O'Malley had declared it previously, by omission of insistence on different wage provisions.

Adams corroborated this testimony but stressed that it was conditional and not an offer. He testified that

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immediately before the strike he asked the union representatives why it was being called, and that they cited various economic reasons. He testified further that the first time the Company's proposal was discussed Pappin told him that

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the provision concerning parties to the agreement was "unacceptable"; that the Union would not accept the ballot proposal under any conditions; and thereafter, when the Company's second proposal concerning parties and balloting was submitted, Pappin said ". . . if (the Company) tried to advance the merits of that there there would be no progress. . . ." Continuing, Adams testified that on March 17 Pappin was opposed to the entire noneconomic proposal submitted by the Company; that Pappin at various meetings, although Adams could not fix the dates, objected to and argued against the Company's parties and balloting provisions; that Pappin said that the Union would file charges if the Company insisted on its ballot proposal (Adams could not say but would not deny that this was before the strike), but he said that various items were "strike issues," and similar statements were made after the strike had started. In general, Adams did not recall and would not deny various portions of Pappin's testimony concerning these two proposals, but he indicated that threats to strike were not limited to these two but were directed against various items.<sup>6</sup>

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<sup>6</sup>In a newspaper advertisement on April 2 the Company listed as "The Reasons the Union Gave for Calling the Strike" the two items here cited and the questions of "Wages" and "Steward's Pay" while investigating grievances. It does not appear from the testimony that the strike was called because of differences over stewards' pay. The same can be said concerning the item of wages, and the testimony quoted in the preceding paragraph appears to support this. Other newspaper advertisements by the Company, received in evidence, stress employee balloting and wages. The Union's advertisements of March 30 and 31 stress wages and refer to "decent wage and security conditions" and "a fair wage and

(Footnote continued on following page)

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On April 25 the International and its representatives urged that the strikers return to work. Butdorff, president of the Local, was reluctant to submit such a proposal to the men, and it is clear that representatives of the International prompted settlement of the strike although the International did not thereafter directly negotiate or bargain with the Company. Whatever the legal effect of such action, considered infra, the facts are as here found. On Butdorff's recommendation at a special meeting of the Local later in the evening of April 25, the Local's bargaining committee was instructed to make contact with the Company on April 27 and get the best offer possible for settlement of the dispute and return of the strikers. The local committee broached the matter to the Company's on April 27, and on April 30 received from the Company a proposed memorandum of settlement. This was evidently

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submitted for approval by the International's executive board, signed by the Company and the Local on May 2, and approved at a meeting of the Local on May 3. On May 5, an agreement was entered into between the Company and the Local, effective March 26, 1953. From May 5 to March 20, 1954, International representatives met on many occasions with representatives of the Company and the Local, discussing and participating in matters which arose under the agreement. (Intervening claims by other unions and subsequent actions are not here material.)

working agreement"; that of April 2 refers to the parties and balloting issues as well as wages. I regard the various advertisements, handbills and other communications as public relations or tactical maneuvers and hardly probative in the face of the weightier evidence present. The greater the attractiveness of and emphasis on any issue, the less important other issues will appear to be. If expertise means anything, this is a recognition of fact in this field.



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Pending while this case was being heard was a petition to review and set aside the Board's Order in Allis-Chalmers Manufacturing Company.<sup>7</sup> The latter case involved a portion of the second main issue now before us: the right of an employer to insist on employee ballots before the employee representative (there being no question of identity in that case) may act. The Board had there held an employer's insistence on a provision that after a contract has ceased to exist, "the Union could not

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strike unless a majority of the employees in the unit voted in favor of strike action." On May 21, 1954, the Circuit Court<sup>8</sup> denied enforcement, disagreeing with the Board's finding that "the strike-vote clause . . . imposed an unlawful limitation upon the Union's right to act on behalf of the employees."

## B. The alleged violation of Section 8 (a) (5)

## 1. Recognition

On the issue of recognition of the International or the Local, or both as parties to an agreement, we can start with the limited proposition that either the International or the Local might administer an agreement or fulfill functions as agent for the other, which would remain as principal, or a complete substitution of one for the other might be effected.<sup>9</sup> But such agency or substitution would be of the bargaining representative's volition, and it does not follow that an employer may insist on replacement of one group for another as representative of employees or as acting agent for such representative. The issue of

<sup>7</sup>106 NLRB No. 151.

<sup>8</sup>Allis-Chalmers Manufacturing Company v. N. L. R. B., 213 F. 2d 374 (C. A. 7).

<sup>9</sup>Times Publishing Company, 100 NLRB 638, 642-644.

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such insistence must therefore be considered on its own merits rather than as an established converse. (Distinction can be noted between an agent informally selected to negotiate on behalf of another, and the principal in a contract who has been certified by the Board.)

The various factors herein will perhaps more readily be noted if they are separately enumerated.

1. A certain entity, the International, has been certified.

2. That entity is entitled to recognition as exclusive bargaining representative of all employees in the unit in the absence of legal disability.

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3. Whatever modification or agency might properly be agreed to by both the Company and the International, the Company may not insist on such modification or agency designation to the point of refusing to enter into an agreement without the modification.

4. The Company did insist, as we have seen both from the testimony concerning the meetings and from Blythe's statement of the Company's position, on substitution of the Local for the International and recognition of the Local exclusively in any agreement. The Union on the other hand insisted on inclusion of the International; it requested but did not insist on inclusion of the Local also, and did in fact propose as the Company had suggested that the agreement be in a form which included only the Local while giving prominence to the International. (This was the form mentioned on March 31 and April 17.) The testimony suggests that "the Union was interpreting (the form which mentioned the International first as in the first Pesco agreement) as being in effect primarily a contract with the International" although, as I have construed it, "International" is there only a modifier, and the sole

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representative recognized is the Local. Retreating from its position that the International be named in addition to the Local, the Union proposed such reference to the former as would suggest, in the Union's contemplation at least, its status as a party. The Company argued that such proposal did not differ from its own, and continued with the latter. The contrast is clear between the Union's interpretation and the Company's insistence on the Local without even the prominent reference which the Union sought for the certified representative.

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5. To this point there was a refusal by the Company to bargain within the meaning of the Act.<sup>10</sup>

These points have been indicated by the evidence and arguments. Able and ingenious counsel may raise others, and policy determination may suggest different consideration. But whatever the argument, the evidence points directly to unlawful insistence and hence refusal to bargain.

As noted supra, in addition to the various oral statements of the parties during the negotiations on the question of recognition, and the respective proposals per se, the Company's proposal of March 12 undertook to explain and argue for its position. The importance of the question and the involvements here may warrant further reference and perhaps repetition. The Company maintained (the evidence shows that its "proposal" was insisted upon although Adams referred to emphasis as distinguished from insistence) "that the contract be made between the local Union and the Company," while it recognized the Union's demand as not being exclusive in its reference to "the principal party." The Company's argument that the Union had prior to the election spoken to employees

<sup>10</sup>Ibid.; Taormina Company, 94 NLRB 884, 900, enf'd 207 F. 2d 251 (C. A. 5).

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about "(their) own contract" might be employed to persuade the Union; it gave the Company no right to insist.

Further, the Company's argument that "the employees should not be deprived of the right to make and sign their own contract" does not point to the Local as a party, either alone or jointly with the International. Unless the Company was arguing that the employees must literally and personally sign the contract (which argument itself denies the principle of collective bargaining through a recognized representative), the contract signed by the International would be the employees' "own" since the International had been certified as their representative.

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I have found that, while the Company insisted that any contract be with the Local only, and the Union requested recognition of both the International and the Local, the Union's insistence was on the International in the face of the Company's exclusion of it as a named party to an agreement, or on prominent use of the International's name if it were not a party. There is no reference in the recital of the negotiations to any indicated willingness by the Company to enter into an agreement with the International alone. To say that the Union (the question of its right to do so, aside) also insisted on the Local as a party is to assume something which is not in evidence and which appears to be contradicted in the Company's proposal of March 12, with its statement of the Union's position, repeated in an advertisement the following month. Whether the Union would have so insisted had the Company not, we shall not speculate. The Union did not here insist on recognition of a party which was not entitled to recognition. Clearly the Union objected to recognition of the Local alone, and the Company objected to the International. There was no disagreement over recognition of

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the Local; the disagreement arose over recognition of the International, which the Company refused. In deference to the arguments and able presentation of counsel, consideration is herein given to the various facets of the evidence in this connection in addition to the over-all aspect; and the finding is made against the Company's position that the Union was itself unwilling to make a lawful proposal. (The question of the Union's good faith is considered infra.) The difference here revolved around recognition, not of the Local on which all were agreed, but of the International, the certified representative: the Union sought such recognition, but the Company refused.

Additional attention needs to be given to the Company's position in this connection. Accepting the allegation in the answer as supported by the Union's constitution that the International carries on its activities at the plant through the Local, that it receives members as they

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become members of the Local, that at least in some cases contracts have been entered into by the local union without the joinder of the International as a named party, and that those contracts are recognized by the International, such facts would not and do not support an insistence that the International must maintain such a relationship for the duration of any contract with the Company, and further that it must do so while excluding itself as a party to such contract. Nor is this a bargainable issue<sup>11</sup> on which a firm position on one side is set off against an equally firm position on the other, to an impasse: the identity of the representative, declared by the Board after an election may of right be maintained as so declared. The Company could lawfully request,<sup>12</sup> as distinguished

<sup>11</sup>Taormina Company, 94 NLRB 884,900.

<sup>12</sup>Id. at 885.



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from insist on; another representative, or as counsel would perhaps state it, on the recognition of the local agency through which the certified representative carries on its activities; but such request denied, the Company was obliged to recognize the International qua International as the other party to a collective bargaining agreement. The obligation imposed by the Board certification stands.

That obligation was in no wise lessened because Adams and Pappin, the principal negotiators for the Company and the Union respectively, did not agree on the meaning or significance of the identification of parties in other agreements. Apparently there are contracts with international unions, with local unions, and with both international and local unions; and as noted supra, the Pesco Division of the Corporation entered into an agreement with the local union of the International in 1947, but with the International and the local union in 1952, the latter agreement being evidently for 3 years and in effect during the period here considered. (Aside from any question of insistence in connection with either Pesco contract, the Company apparently having recognized the certified representative, which according to the testimony was

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the local in that case, the agreements there show no more than the addition of a party, not the substitution of another for the certified representative.) The issue is not what the constitution of the International permits or Pappin's understanding of what it permits. That similar requests have been acceded to, or have been made, by unions elsewhere may encourage further requests and may have influenced the Company in these negotiations; but again, whatever the circumstances (including form of certifica-

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tion, if any) and the agreement elsewhere,<sup>13</sup> with whatever concessions or waivers, the Union's rights in this connection are clear, and the insistence to impasse that they be waived constitutes a violation of the duty to bargain.

Nor should we overlook the fact that we do not know, in the case of the other agreements referred to, whether there was prior certification, who was certified, or if the agreement was not executed in the name of the certified representative, whether the representative interposed objection.

I do not rely on the International's constitution as a source of evidence that the Company violated the Act although Pappin so declared in objecting to Company's proposal. Nor is it clear how alleged shortcomings in that constitution or the Union's failure to abide by it, as by calling a strike with less than a two-thirds vote, could, any more than the document's own authority, modify the Company's obligation to bargain.<sup>14</sup> (The International having approved the agreement, as the

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Company points out, this is not a case of a wildcat strike.) That the Local and the International in a letter to the Company had mistakenly declared that the Local had been certified and was the bargaining agent is evident. But such a declaration did not vest any right in the Company to insist on realization of the erroneous reference and perpetuation of an incorrect status. Union advertisements during the strike indiscriminately referred to the International and the Local. Also evident is the heading of the wage proposals attached to the Union's first proposed agreement: "PROPOSAL OF LOCAL 1239 UAW-CIO."

<sup>13</sup>Aside from relevance, the validity of comparison is considered *infra* in connection with the analysis of "history and current practice."

<sup>14</sup>*N. L. R. B. v. Deena Artware, Inc.*, 198 F. 2d 645, 652 (C. A. 6).

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It has not been suggested that the Company was prejudiced by any earlier reference to the Local instead of the International. (The Company's references, in correspondence, to the Local as certified representative were made on the advice of counsel.) The issue was clear and a correct position was declared and maintained by the Union at the bargaining meetings. Nor is the International's right to recognition as the principal and proper party to the agreement diminished by employment of local representatives to assist or even to represent the International or the Local or to prepare the proposals with the advice of the International; nor by the fact that, in the terms of a stipulation noted on the record, the Union elsewhere alleged that the "International Union has chartered its Local No. 1239 as the Local Union of the said employees, pursuant to its constitution"; admitting that the International had been certified, the Company there denied knowledge that it had chartered the Local as such.

If it be urged in the form of the answer that the International and the Local are the same or that the same entity encompasses both, it is clear that the identification is of the whole and one of its parts; the Company's insistence was on bargaining with the part to the exclusion of the rest of the whole. Despite Adams' claim that the Preamble in the Company's proposals referred to both the Local and the International "in

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just the words that the union itself had made its proposal," the reference in the one is to the Local as part of the International while in the other it is to both the International and the Local.

That there must be a willingness to embody in a written contract any agreement reached in collective bargain-

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ing is no longer open to question.<sup>15</sup> It is fundamental that a contract must be between defined parties, and it follows from the certification process that the parties are in the first instance to be those who have been defined and recognized as such in the certification. If an employer may not select those who are to sit on the opposite side of the bargaining table,<sup>16</sup> a fortiori it may not select the party to be recognized which in turn selects its negotiators. Whatever the bargaining "with respect to wages, hours, and other terms and conditions of employment," these elements do not include the identity of the parties to be recognized. Such identity having been fixed by the certification, the bargaining should proceed to the substantive terms of an agreement. To insist on modification or substitution of parties is to fail in the statutory obligation to bargain with the proper party. If, as the Court held in *N. L. R. B. v. Corsicana Cotton Mills*,<sup>17</sup> an employer's insistence on limitation of a union's conduct of its internal affairs is an attempt to withhold "recognition from the union as bargaining agent," then surely to

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insist that the contract be with another entity is to withhold recognition.

If I understand correctly, the Company denies that its proposals sought to avoid in any way the certified repre-

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<sup>15</sup>*H. J. Heinz Company v. N. L. R. B.*, 311 U. S. 514, 525. The several approaches are here made because one cannot tell at this time which will meet with favor from reviewing authority, nor which approaches will be adopted by counsel. A later declaration, based on agreement with the conclusions herein, that it is unnecessary to "pass upon the legality of" any findings here made is a small but possibly necessary price for consideration of the different facets of the case. Cf. *Kingston Cake Company, Inc.*, 97 NLRB 1445.

<sup>16</sup>*N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 34.

<sup>17</sup>178 F. 2d 344, 347 (C. A. 5). The Court in the *Allis-Chalmers* case (footnote 7 supra) cited and accepted this holding. It did not agree that the earlier Fifth Circuit ruling supported the Board on the issue of employee balloting, and I shall therefore not cite it in the latter connection.

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sentative. It suggests a triune entity, i. e., that the bargaining agent manifests itself in three different forms which are yet all one: the International apart from its locals, the Local as a separately functioning person, and the International with its locals jointly. Thus, for example, the Company in its answer refers to the agreement which it entered into with the Local alone on May 5, 1953, as an agreement with the International. This is no attempt by the Company to mislead or to misstate a fact; it is but the identification of the respective entities as one, and alone supports the argument that "the employer and the union . . . ultimately reached agreement"; and the reference to the contract as being "between the Company and the UAW-CIO." (Further, after distinguishing between "international representatives" and "local representatives of the UAW-CIO," the Company in its brief refers to the latter without distinction as "the UAW-CIO representatives" in connection with the agreement which was entered into on May 5.) I cannot accept such identification. Nor can I believe that the Company insisted, to the point of a strike, on what was to it "a distinction without a difference." If this was "but one union" acting in different ways, and the Company so regarded it, there is no reason for the Company's insistence on one form of recognition rather than another in the face of the Union's claim of distinction. But the Company's contention of "but one union" appears to have been founded only on the references loosely made by the Union in various communications, as noted supra. As we note the Company's arguments for dealing with the Local rather than with the International, it will be clear that the Company did not regard the International and the Local as a single entity. This may be another instance "of the endless



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bickering and jockeying which has theretofore been characteristic of union demands and employer reaction : . . ."<sup>18</sup> It may be significant that, when the picketing issue was settled in connection with a then pending restraining order, the Company recognized the International and the Local as separate parties. Distinction is further recognized in the Company's brief where, despite the insistence that "there was just one union," recognition is given to "the local administrative division," itself a labor organization. In any event, the bargaining representative may insist on recognition in the terms of the certification, as we have seen; and the certified bargaining representative here is the International, not one of its local administrative divisions.

Neither does the fact that other agreements have been signed by both international and local representatives when one or the other was not a named party to the agreements indicate that international and local were there identified as one. There can well be recognition of their efforts in negotiation without recognition or acceptance of their status and authority as parties. Whatever the facts and speculation concerning the other agreements, the fact is that here, while the Company was willing to negotiate with the International's representatives both before and after the agreement was executed, it refused to recognize the International as a party to the agreement; and the International is not and does not consider itself to be identical with the Local.

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That the Company "thought that the major emphasis ought to be on a contract with the local representatives";

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<sup>18</sup>Whitin Machine Workes, 108 NLRB No. 223, concurring opinion of Chairman Farmer.

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that the wages and working conditions at this plant are not comparable with those in larger cities and therefore should not be governed by other than local considerations; and, as Adams put it, that the Company felt since the people involved lived and worked locally and that is where problems ought to be settled, that "the primary emphasis"<sup>19</sup> should be put on the local representatives—these facts and feelings do not lessen the offense in refusing to execute an agreement with the certified collective bargaining representative. The effect of strictly local conditions may be weighed by the parties to a collective bargaining agreement proposed or in esse; such conditions do not exclude a rightful party.<sup>20</sup>

Further, the argument being directed against the influence of "outsiders" on a local agreement, consistency would suggest the exclusion of such outsiders from the negotiations. But this further wrong was not committed, and they were not so excluded, the exclusion sought being rather of them as a party to the agreement. The point that the Local is better acquainted with the needs and desires of the employees than is the International must further fall where representatives of both partake in negotiations. There is no dispute that both were represented in the negotiations through April 21, and that they have administered the agreement which was entered into on May 5. The issue is not whether they were accepted as

<sup>19</sup>The Company's references to "emphasis" on local representatives is consonant with and explains its exclusion of the International: there could be no such emphasis in the matter of recognition if the International were named either the sole or joint representative of the employees; and the Company clearly excluded it as such. This is in marked contrast to the position of the Union, there being no evidence that it ever insisted on the Local. In the face of the Company's emphasis on the Local, as noted supra, the Union called for recognition of, and later only prominent reference to, the International.

<sup>20</sup>Aldora Mills, 79 NLRB 1, 2; cf. Times Publishing Company, 100 NLRB 638, 640, 644.

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negotiators acquainted with local conditions, but whether the International was recognized as a party,

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In any event, as noted *infra*, good reasons and fine intent do not warrant action which is itself violative of the act. Thus an employer does not have the right to anticipate that a union will improperly deal with employees; should a union in fact fail to represent them, the employees themselves may seek a remedy, and for unlawful action there are other remedies. An employer may not insist on saving employees from themselves or from their duly certified collective bargaining representative. I would not here suggest what Thomas Jefferson called an "elective despotism": the inalienable rights of employees remain. But the employer is neither the guarantor nor the protector of those rights.

## 2. Employee balloting

Refusal to bargain having been found in connection with the recognition clause, it is still necessary to consider the proposed employee ballot provisions, both because I cannot now foresee what the reaction will be on review,<sup>21</sup> and in order to suggest the proper course to be followed in future negotiations between the parties.

Going beyond the "emphasis" on local representatives, the Company now sought assurance of expression from the employees themselves. Blythe explained that, right or wrong, the Company "would be in trouble all the time, if (it) did not correct" the situation "if the time ever

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came when 50 per cent of the people employed had a dif-

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<sup>21</sup>Cf. Kingston Cake Company, Inc., footnote 15, *supra*.

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ferent opinion than what the management had."<sup>22</sup> (Despite this reference to the total number employed rather than to the number voting, there is no issue here in that respect.) As the Court declared in the Hudson Motor Car Company case,<sup>23</sup> "When it is once made to appear from the primary facts that the employer has violated the express provisions of the Act, we may not inquire into his motives." We are thus concerned with the acts committed and the methods adopted, to the extent that they may be unlawful, and not with the motivating purpose.

We must not, of course, lose sight of the purpose of the Act; we should indeed stand ready to consider whether a given attitude or action "be disruptive rather than fostering in its effect upon collective bargaining."<sup>24</sup> But in such consideration we may not depart from the provisions of the Act and the applicable interpretation thereof. To stress purpose or end at the expense of specific provisions and interpretation to the contrary is to engage in judicial or administrative legislation; as we seek to enforce and implement the statute we must act within its framework. Noninterference with the internal working of unions would appear to be too clearly established to be upset by an alleged laudatory motive. As "... an employer's protestation that he did not intend to encourage or discourage must be unavailing where a natural consequence of his action was such encouragement or discouragement,"<sup>25</sup> so a proper or even praiseworthy motive must be unavailing where a natural consequence of the position insisted upon is interference with the organizational activities of em-

<sup>22</sup>That a laudable motive does not justify any and all means or method adopted is clear if we realize that the reason here cited could be urged to warrant a prestrike poll by an employer. But despite any such reason, such a poll is unlawful (The Stanley Works, 108 NLRB No. 102).

<sup>23</sup>N. L. R. B. v. Hudson Motor Car Company, 128 F. 2d 528, 532-533 (C. A. 6).

<sup>24</sup>J. H. Allison and Company, 165 F. 2d 766, 768 (C. A. 6).

<sup>25</sup>Radio Officers' Union v. N. L. R. B., 347 U. S. 17, 45.

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ployees and the free internal working of their representative.

The Company here anticipated the Union's failure to represent the employees, and with such anticipation took unto itself the privilege of

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preventing or remedying such failure. In the recent Midland Rubber case,<sup>26</sup> a majority of the union membership approved an agreement negotiated with the employer, but before the agreement was signed a majority of the employees in the unit signed a petition opposing execution of the contract. The contract was thereafter executed although three of the Union's six-member negotiating committee refused to sign, all of this occurring within 6 months after the Union's certification. The Board there declared:

In these circumstances, we see no warrant . . . for inquiring into the disagreements among the employees as to the precise economic demands that should be made upon the Employer by the duly selected majority representative or by the regularly chosen officers of the Union.<sup>4</sup> Indeed, the manner in which employees resolve disagreements caused by conflicting interests within the limits of any appropriate bargaining unit are beyond the scope of the Board's authority.<sup>5</sup>

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The difficulty there was quite real, not merely anticipated. It would seem, then, that the Company's emphasis here on "the mechanics for settlement" of possible disputes as declared in its letter of February 9, 1953, which accompanied its counterproposal, "within the limits of (the)

<sup>26</sup>Midland Rubber Corporation, 108 NLRB No. 128.

<sup>4</sup>Cf., Queensbrook News Co., Inc., 98 NLRB 84.

<sup>5</sup>Lewittes and Sons, 96 NLRB 775.



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appropriate bargaining unit" (in the language of Midland Rubber, and as distinguished from disputes between the bargaining unit and the Company) is beyond the lawful scope of the Company's insistence.

The Court's learned opinion in the *Allis-Chalmers*<sup>27</sup> case and the keen presentation by counsel in the instant case suggest a different conclusion here and demand careful analysis.

That proposed amendatory legislation to require pre-strike ballots has recently failed of passage casts little if any light on the issue before us. It is clear, of course, that there is no declaration that public policy requires such ballots. But neither is the failure of adoption equivalent to a clear statement of illegality; this factor considered alone is quite compatible with recognition of the issue as one which is fully bargainable. We must therefore look elsewhere for further assistance on this point.

The plan of the Act, and its purpose, are to give a representative of the majority of the employees in an appropriate unit the exclusive bargaining authority for all in the unit. Unless we undertake to rewrite the Act or to ignore its purposes, we must recognize the bargaining agent's right to act as representative without interference or modification of its authority. If an employer may insist on a no-strike clause, that is an item which it gains in negotiation with the employees' representative; how the latter reaches its own decision to agree to a no-strike clause is not a problem for the employer. Even were the item here sought only a

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prestrike vote among all employees, whether members of the bargaining agent or not, the difference is clear: for

<sup>27</sup>Footnote 8, *supra*.

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agreement on action vis-a-vis the employer (no strike), has been substituted a matter of procedure by the bargaining representative among the employees before it determines on such action, and in fact an insistence that the bargaining representative make its decisions only after following a certain procedure. The difference between such procedural regulation and a no-strike clause, and the inapplicability of any rule concerning insistence on the latter are evident from the fact that adoption of the procedure does not exclude the right to strike: That the procedure here insisted on includes voting by nonmember employees merely points up the limitation on the bargaining representative.

The Union's representative authority would here be confined to the ministerial duty of conducting elections as required by the Company and transmitting notice of the result; further, balloting would be diluted<sup>28</sup> by inclusion of nonmember employees. Insistence on such conditions is denial pro tanto of the Union's authority as bargaining representative.

The fundamental difference in relationship and the parties and principles involved in a no-strike clause on the one hand and a pre-strike ballot on the other is overlooked when it is argued that the latter is a lesser limitation. The question to be answered is, where is the limitation placed? In one case it may be lawful; in the other not so. Calling a strike, with possible consequent effect on production does not merely affect the employer-employee relationship; it is a part of

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that relationship. On the other hand, and whatever its effect, the procedure to be followed in deciding whether or

<sup>28</sup>If the Company would say, "Fortified," concededly the authority of the bargaining representative would be thus circumscribed.

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not to strike is not a part of the employer's relationship with his employees. As well accord an employer the right to insist that, whenever a strike go into effect, it may be voted on only on a certain day of the month and that every voting employee must first listen to employer urging. (This last is not far removed from the plan of consideration by employees of the employer's last offer.) Whatever the merit of such procedure, it is not indicated by the policy of the Act, but is contrary to indicated policy. Accord the employer the right to insist on details of union administration ("internal affairs" so-called), and there is no limit to the conditions which he may impose on union proceedings.

While the Company referred to such items as part of "the mechanics for settlement," its emphasis on "settlement" cannot hide the fact that it was here dealing with the Union's "mechanics."

The door opened, all sorts of limitations could be insisted upon; and why not, indeed? The difference might be one of frequency or degree, but it would not be a difference in kind. Here we find restriction on union procedure after the agreement has gone into effect: during its term and with respect to termination or modification. If this be proper, there is no valid basis for denying to employers the right to insist on conditions precedent to adoption of a contract; conditions which could effectively further restrict the statutory rights of collective bargaining representatives. Does the representative refuse to accept a provision insisted upon by the employer for a proposed contract? Then the latter can insist that the issue be presented to the employees for determination! But such insistence, whether before or after the adoption of an agreement, makes a mockery of the provision of the Act that the designated agent be

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the exclusive representative.<sup>29</sup> The provision that employees may themselves present grievances to the employer and have them adjusted would no longer be the exception. Of greater import and significance, a voting majority could at any time during the certification period and in direct dealings with the employer (if the latter insisted on such a position) overrule the "exclusive" representative.

If there may be insistence on a no-strike clause it is not because a strike is a condition of employment (as distinguished from a condition for employment) and therefore bargainable, but because a strike waiver is an item which public policy recognizes as a proper quid pro quo in negotiations. But whatever the basis for permitting insistence on a no-strike clause, the method by which a bargaining representative comes to a decision is neither a condition of employment nor a proper subject for trade and insistence by an employer.

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Pursuing the point further, the statutory limitation on the exception concerning grievances would itself become meaningless. An employer need only insist on a provision which would make all other terms of the agreement subject to any future adjustment of grievances, and such adjustments would no longer be "inconsistent." Thus,

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<sup>29</sup>Section 9 (a) of the Act provides follows:

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: Provided further, That the bargaining representative has been given opportunity to be present at such adjustment.

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regardless of their exclusive bargaining representative, individual employees could grieve and, with the employer, agree to any terms and conditions concerning which their representative could or may have agreed.

In the instant case the Company maintained a consistent position and demanded a vote not only before a strike but even before the contract itself could be terminated. Here is an attempt by one party to limit the other's right to terminate any agreement at its indicated termination date while the right of the former to terminate is in no way diminished. (We need only mention the point that by making successive "last" offers and "any subsequent offers," the Company could, at its option, perpetually prevent strike action or termination of any agreement.)

Labor peace is indeed a desideratum. But there is no warrant for adoption of an unlawful method to achieve so-called peace. I do not believe that the Company or its counsel will argue the last stated proposition: they will maintain only that their method is not unlawful. But emphasis on the goal suggests a willingness to overlook "methods" for the goal to be attained; yet there may be a measure of agreement that we should not seek that labor "peace" which might be obtained by pointing a gun at one who threatens to strike. (Citing an extreme situation, I do not suggest that the Company here pointed a gun.)

<sup>3</sup> This issue can be broken down into two items, each of which indicates a violation. For the reasons noted, the Company must be found to

have refused to bargain if its insistence was 1. on a ballot before the Union acted, or 2. that any ballot taken must be among all employees in the unit, whether or not members



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of the Union.<sup>30</sup> The insistence here was on both. Nor, as on the question of recognition, does it matter whether Pappin could cite a section of the Union's Constitution which forbids the balloting which the Company demanded, or even whether the Constitution contains any such provision. His opposition to the balloting clause in the agreement, and the Company's insistence on it were further indicated during the colloquy concerning the union Constitution in this connection; and the insistence was unlawful. With respect to the Union's proposal on April 17 for a union shop, the illegality of company insistence on a secret ballot is not less such because the Union was willing to accede in return for what it considered a protective measure.

The Court in *Allis-Chalmers*, apparently considering this point as there raised by the General Counsel, referred to the difference between the right to strike "during the duration of the contract" and the right "after the contract termination." I can only conclude that the issue there considered was different from that here noted. The objection which I have indicated would obtain even if insistence were on a clause during the life of the contract provided that the clause demanded by the employer, instead of merely prohibiting a strike, set forth the manner in which the bargaining agent must proceed in its consultation of or other dealings with employees. This latter is a strictly "internal procedure" over which the employer may not claim control. As for the period "after the contract termination," the

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Company here, as noted, attempted to avoid that alterna-

<sup>30</sup>An employer's right to anticipate a representative's failure to consult or act on behalf of employees has been referred to *supra* and will be further in the analysis of the *Allis-Chalmers* decision.

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tive by provisions delaying or preventing termination; it insisted on a strike bar when, but for its urging of unilateral power to continue the contract, such contract would be terminated.

Considering the argument that all employees should have a voice, the Court in *Allis-Chalmers* declared:

To hold otherwise means that non-Union members for whom the Union has been certified as the bargaining agent are always without right to express their desires concerning matters of vital importance to them.

The duration of that "always" is of course limited by statutory provisions concerning representation and the employees' choice thereunder. But in any event the policy and express language of the Act provide for expression of desire in a representation election. No more than voters vis-a-vis the legislature are employees given the right to limit the action of their representative as such. (Here that right is being demanded for them by the employer.) The Act does not provide for "referendum" as a limitation on the activities of the collective bargaining representative; a right to "recall" is provided. Under the circumstances, with true and sincere respect for the Court and its decision, I must confess my own inability to see that to deny the employer's demand is to cast nonunion employees "into oblivion," or that the reason for the denial is a "pretext" which justified such demand.

Aside from any question of relative desirability or policy, the right here claimed for the employer is one of bargaining not for its own benefit except indirectly, but for the alleged benefit of employees. Such

a claim is outside the statutory and recognized scope of

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collective bargaining. To the extent that it undertakes to argue for the welfare of any employees as distinguished from its own welfare, the employer assumes an anomalous position, replacing the statutory representative of all employees in the unit and attempting to sit on both sides of the bargaining table. (I am no more sympathetic to a "round table" discussion under such circumstances than I was to a proposal for such discussion in connection with Korean affairs a few months ago. In both cases the parties involved; without comparing them, are partisan, whatever hope may be for the future.)

This is certainly not a subject for insistence. Nor did the Company herein limit its insistence on employee ballots to ratification of company offers and strike decisions. As noted, termination by the union of any agreement was also to be subject to a ballot without such limitation on the Company's freedom of action; and a later proposal made such procedure applicable also to modification or amendment. I cannot equate the Board's authority to police certain elections with the rights here sought by the Company, if relevancy be claimed for stipulations noted on the record concerning Board practice.

I endorse the analysis by the Court in *Allis-Chalmers* of the Board's theory as more plausible in the *American National Insurance Co.* case:<sup>31</sup> the proposal in the latter, as described in *Allis-Chalmers*, "included matters concerning which the Union had a statutory right to bargain. . . ." Further, "any impairment involved (here as in *Allis-Chalmers*) relates to a right which the Act preserves to the employees." But while "the proposed clause here does not impair any right **delegated** (emphasis supplied) to the Union by the Act," the Act clearly indicates, and

<sup>31</sup>N. L. R. B. v. *American National Insurance Co.*, 343 U. S. 395.

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the cases recognize, the right of the Union to reach its own decisions free from employer dictation (distinguishing this from any obligation on

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the employer to abide by such decisions); and the right preserved to employees is to engage in union or other concerted activities free from employer interference and through their bargaining representative. Under the Act, employees may refrain from engaging in concerted activities. But having selected an exclusive bargaining representative, they thereafter express themselves in bargaining matters, whether by action or waiver of action, through that representative exclusively. They may indeed, as the Court declared in *Allis-Chalmers*, "waive such right"—in a proceeding between themselves and their representatives, and over which the employer may claim no right of insistence. This seems to me to be consistent with the terms and policy of the Act. It permits insistence on a no-strike clause, but not on any plan which undertakes to outline union-employee procedure.

In the *Allis-Chalmers* case the Court noted the Trial Examiner's conclusion that the strike clause there considered "has been accepted by large international unions, and represents negotiated policies." It also noted that "the examiner had pointed out that the Company had a right to bargain with the Union regarding the disputed clauses and to attempt to persuade the Union to accept them," but that he had "concluded that the bargaining history did not establish that the proposed clauses 'represent conditions of employment bargainable to the point of impasse'." The Court then declared: "The pronounced history (reviewed by the examiner), however, appears to have been cast aside by the examiner on . . . speculative reasoning." The Court found it "more reasonable"

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to adopt another alternative which "perhaps is also speculative."

To refer to so-called "history and current practices" and to draw any conclusion therefrom is unwarranted. There is no comparison with the number of cases in which no such request was made or, having been made and

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refused, was not pursued further; so that there is no basis on which to recognize this as in line with "history and current practice." Nor, as noted, do we know whether in this history requests were met with refusals but were persisted in to acquiescence; the question before us is whether there was unlawful insistence, not a mere request, and the references to other cases shed no light on that. In simple language, the fact that in other cases a given point was agreed upon does not prove at all that the point was insisted upon or that, if there was insistence, such insistence was by the agreement made lawful. No more than in the matter of recognition do other contracts establish the Company's right to insist on employee ballots as it did here.

As indicated, the analysis which I have undertaken relies on no "speculative reasoning" concerning the acceptance of employee ballot proposals. In this context I would not say that "History and current practices are strong, sometimes conclusive, evidence as to what are appropriate subjects of negotiation." Acceptance of the conclusion that such proposals may not be insisted upon although they may be submitted and adopted if assented to permits us to regard "history and current practices" as indicative only of some instances of such assent under the circumstances there existing. What may be wrong (and we do not even have evidence that wrong was committed in the other cases mentioned since we have no evidence of insistence there) does not become right because accepted or



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permitted elsewhere; if it be claimed that insistence in another case was right or lawful, a demand for proof takes us back to the point which we have passed in the instant case. Aside from the absence of sufficient evidence in that connection, the argument from history and current practice seeks to avoid the question of right and wrong in favor of a so-called realism which, like realism generally, denies fundamental truth or natural law and urges what appears at the moment to be advantageous and expedient: The question then remains, Whose claim for advantage is to be furthered?

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With respect to both of the Company's proposals which we have considered, it can be said: "Ain't no harm in askin'; but there sure is in persistin'." With this the Company's counsel appears to agree conditionally. At the risk of stressing the obvious, I point out that submission of the Company's proposals did not violate the Act; insistence thereon did, in my view that these were not "bargainable issues" on which under American National Insurance Co.<sup>32</sup> both sides could in good faith maintain and insist on their respective positions.<sup>33</sup> When the Company, maintaining its position, bargained and entered into an agreement with the Local alone, it further defaulted in its obligation to bargain within the meaning of the Act. (While there are suggestions to the contrary in the testimony received, Blythe testified and the preponderance of the evidence indicates that the Company adopted and maintained its position under advice. Of course, it may test the law; but there should be no question concerning the facts and the position taken.)

<sup>32</sup>Supra.

<sup>33</sup>Cf. Fehr Baking Company, 104 NLRB No. 43, where the employer, negotiating, declared only that it was not waiving whatever rights it had stemming from certain exceptions which it had filed and which were then pending before the Board. This is a far cry from insistence.

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## 3. The Union's good faith, waiver, and laches

Although, in an attempt to meet the allegation that it wrongfully sought to enter into an agreement with the Local alone, the Company set up a tu quoque claim that the Union itself deviated from the certification and sought recognition of the Local, the evidence indicates, as I have found, that the Union never reached the point of insistence on the Local as a party. The testimony is only that the Union "went along," agreeing to the Local as a party. The Company, insisting on the Local, did not object to the inclusion of the Local in the Union's proposals; the objection was only by the Union to exclusion of the International by the Company.

Pointing to various statements by the Union and its representatives, the Company charges that the Union did not itself bargain in good faith as its position during the negotiations differed from those other

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statements. We have noted references to local autonomy under the earlier Pesco agreement, and a failure to distinguish adequately between the International and the Local in various communications. But no more unchanging and to be relied upon than propaganda references to higher rates of pay and other terms obtained and promises of further gains to be achieved are boastful assertions of local union autonomy. What the result may be in either case as far as disillusioned union members are concerned is not our present inquiry. But an assurance of autonomy made in handbills distributed among and calculated to persuade employees (or such a statement made anywhere to employees) is no more part of the bargaining process vis-a-vis the employer than is an assurance of better working conditions. As for any attempt to confuse the Company, we have seen that the separate identity of the International

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and the Local was clearly and consistently insisted upon by the Union when that issue was considered. Concessions made elsewhere could not constitute a waiver of rights here. Nor is bad faith to be found because the Union would not make such a concession. (Again it should be noted that, with respect to recognition, there is an assumption here of what is not in evidence; that the circumstances in the other cases mentioned were similar to those in the instant case.)

Nor do strike authorization and reference thereto during negotiations imply bad faith on the part of a union so long as strike action is considered a legitimate means for obtaining concessions. Preparation may be necessary, and warning proper. Furthermore, such activities are considered as "tactical maneuvers."

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My own opinion of such so-called tactical maneuvers, whether by a union in promises to employees at meetings or in advertisements, by an employer in discharge letters which are not discharge letters, or by either at the bargaining table is not here relevant. Whether we like it or not, various preliminaries generally mark the bargaining process. Negotiators have developed their own "courtship dance." Assuming extreme positions, they follow a pattern of not so coy approach until there is a meeting (of the minds). Failure to follow this routine marks the exceptional case. In fact, to ignore it is to risk being branded as inexperienced. The validity of these observations will be recognized by all who have experience as negotiators or who have studied the work of negotiators. In view of this accepted reticence and delay in "laying the cards on the table," and considering the relationship between the parties herein, I find no bad faith in the methods here followed.

Again, lack of good faith is charged because Pappin said that the International's Regional Director would not ap-

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prove the Company's proposals, and elsewhere that the Constitution does not permit such proposals. These are not mutually exclusive statements, and if provisions of the Constitution do not support the witness' position, his statement of position does not prove bad faith. Any error which he made in this connection is quite understandable; to me, at least, the only clear thing about some of the provisions of the Constitution is that they are not clear.<sup>34</sup> At all times, Pappin's and the Union's attitude was clear: the International must be a party to the contract. Pappin's good faith does not depend on the accuracy of his reasons in the absence of evidence of bad faith in stating those reasons.

We must next consider whether by the contract of May 5 between the Company and the Local the Union waived<sup>35</sup> any claim of violation of

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the Act by the Company. If, as found herein, the Company did not bargain in good faith, termination of the negotiations by the Union could have given rise, in the language of the Allis-Chalmers opinion, to the "contention that . . . the . . . proposals were not urged to the extent of affording the Union a valid reason for terminating its negotiations with the Company." Here the negotiations were not "abruptly terminated" by the Union. It maintained its

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<sup>34</sup>For example, a question was raised concerning Article 49, Section 1, which provides for a meeting and vote among all members "Whenever any difficulty arises . . . between its members and any employer . . . or whenever any Local Union desires to secure for its members an increase. . . ." The Company has suggested that since the Union represents all employees, a question may arise concerning nonmembers and in such a case the issue is not limited to members. Again, while Article 6, Section 14, provides that "The International Union and the Local Union to which the member belongs shall be his exclusive representative for the purpose of collective bargaining . . . and for the negotiation and execution of contracts . . . ." Article 19, Section 1, recognizes contracts "between Local Unions (alone) and employer."

<sup>35</sup>As noted *infra*, where the strikers' rights are considered, there is no estoppel here.

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position concerning the Company's unlawful insistence but the Company, adhering to its stand on recognition of the Local alone, entered into a contract with the latter. (As stated supra, the International prompted settlement of the strike and approved the settlement agreement between the Company and the Local, which ended the strike and led to the contract. The International also helped to administer the contract.) Acceptance of this alternative by the Union, with avoidance of the Allis-Chalmers situation, is now met with the

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contention that the Union thereby waived its rights! On the one hand, it is not to be urged that insistence is less such because the other party submits. Nor, on the other, does submission under these circumstances indicate that the earlier stand was not taken in good faith.<sup>36</sup>

Included in the settlement memorandum of May 2 between the Company and the Local was the following provision:

13. The Union will request the National Labor Relations Board to withdraw and the Union will not hereafter revive or press, the unfair labor practice charges filed against the company and now pending in Case No. 8-CA-830. The Union has delivered to the Company and executed form for this purpose and authorizes the Company to deliver it to the Board.

The memorandum was signed on behalf of the Local, i. e., on behalf of "Local 1239, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO."

<sup>36</sup>I have noted the Company's argument "not that there was bargaining to an impasse on the subject, but, rather, that there was bargaining to an agreement." To an agreement, one may add, with other than the certified representative.



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Aside from the fact that the Local, not the certified union, entered into the memorandum agreement and the contract, as was said by the Court in another context, "The most that can be inferred from the union's action (in entering into a contract) is that the advantages of a contract in hand outweigh those which the union might later obtain. . . ."<sup>37</sup> As for any waiver by the International as it urged the Local to get the men back to work and sign a contract, submission after an unsuccessful strike is hardly an ironing out of differences or a waiver of either statutory rights or of violation of those rights. Nor, as we shall soon see, should the Board, which retains the power to direct that any

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unfair labor practices be remedied, refuse in such a situation to exercise such power even if sufficient request were made for the withdrawal of the charge. Here withdrawal of the charge was agreed to by representatives of the Local who were known to the Company to be without authority so to act (the charge was filed by the International), and who acted after their president's specific disclaimer of such authority.

Entry into an agreement does not exculpate the Company from its violation of the Act. Aside from the indicated lack of authority by the Local to waive the International's rights, the Board's process is not to be thwarted by any waiver even if without an element of compulsion or necessity. The Board has recently held again that an agreement between the parties does not render a case moot or affect the Board's power, in its discretion to issue a remedial order.<sup>38</sup> If under some circumstances the Board

<sup>37</sup>N. L. R. B. v. Yawman & Erbe Manufacturing Company, 187 F. 2d 947, 949 (C. A. 2).

<sup>38</sup>The Stanley Works, 108 NLRB No. 102.

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might hold that it should withhold action or remedy as a matter of public policy, there was here no such connivance by the Union or misleading of the Company as warrant such a step by the Board. “. . . ‘The statutory requirement of good faith bargaining is not subject to waiver through action or inaction of parties to a labor controversy,’ for the Board’s duty to enforce the public policy underlying the Act transcends private rights and ordinary principles of contract law.”<sup>39</sup>

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The suggestion of laches inherent in a defense that the contract was maintained until March 20, 1954, is met by the fact that the charges were timely filed and that, no explanation sought or offered for the delay, the General Counsel issued the complaint and notice of hearing 11 months after the original charge and 9 after the amended charge. There is no evidence of delay by the International.<sup>40</sup> If unfair labor practices were committed, the International received and accepted only part of what was its due and right under the statute while itself waiting for action and relief which it had sought.

## 4. Loss of majority

The answer denies that the Union represented a majority of the employees after March 20, 1953, when the strike was called. Evidence was received of intervening claims by other unions between April and December 1953. The Company also offered to show that in July the International expelled 26 former members. Whether these or any of them helped constitute the Union’s majority we could only speculate, as we would also be compelled to do were we to base representation on the number of checkoff authorizations.

<sup>39</sup>N. L. R. B. v. Southeastern Rubber Manufacturing Co., Inc., 213 F. 2d 11 (C. A. 5).

<sup>40</sup>Cf. Arkport Dairies, Inc., 95 NLRB 1342, 1344.

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The sum total of various possibilities and speculations<sup>41</sup> is not proof of loss of majority, nor if there be such loss, can it be relied on, as we shall note, by an employer which has refused to bargain. We need not consider whether there were "unusual circumstances"<sup>42</sup> such as would relieve the Company of the obligation to bargain through the certification year. It has been found that the Company failed and refused to bargain in good faith when it was admittedly obliged to do so.

That the Company may not assert and act on alleged loss of majority has been reiterated as follows:

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The respondent asserts that the union no longer represents a majority of respondent's fabricating shop employees, having lost its majority status since the election. But this does not excuse the respondent from its duty to bargain with the duly certified representative. The respondent cannot decide for itself whether a duly certified union has lost its bargaining status by reason of a failure to retain a majority representation, and deciding that it has, refuse to deal with it further. A bargaining relationship once rightfully established must be permitted to function for a reasonable period, after which the Board, in recognition of changed conditions, may take steps to change it. Until the Board acts, however, the existing certified representative must be dealt with as such.<sup>43</sup>

The certified representative must be given the opportunity to function as such, and the remedy is not to be denied it

<sup>41</sup>The uncertainty in this connection is indicated on the record during a colloquy with the Company's attorney.

<sup>42</sup>Henry Heide, Inc., 107 NLRB No. 258.

<sup>43</sup>N. L. R. B. v. White Construction and Engineering Co., Inc., 204 F. 2d 950, 953 (C. A. 5).

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because of passage of time during which the Company refused to bargain with it. Nor can we separate an existing interunion contradiction or confusion, if any, from the earlier refusal to bargain. The promptness, on April 30, 1953, of a conflicting claim to negotiate on behalf of the employees emphasizes the connection between refusal to bargain and a possible loss of majority. That refusal to bargain may lead to loss of membership has been recognized,

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as has the remedy that the employer thereafter recognize the Union as collective bargaining representative.<sup>44</sup> Such remedy provides the Union with the recognition for a term which the employees are deemed to have indicated and which it has been denied. (This point will be considered but will not be repeated in connection with the remedy, *infra*.)

C. The alleged independent violation  
of Section 8 (a) (1)

Between March 31 and April 22, 1953, the Company inserted some dozen advertisements in the local daily (there were similar radio advertisements) urging among other things, that the strikers return. The presentation therein with the arguments made concerning the items in dispute was an appeal over the Union's head during the pendency of an unfair labor practice strike, and setting the employees off against the union "Professionals" tended to undermine the Union, all in violation of Section 8 (a) (1) of the Act.<sup>45</sup> Similar violation can be found in the visit to the home of employee and local vice president, Patterson, by McCune, a supervisor, and Hunt, toolroom foreman, the re-

<sup>44</sup>Franks Bros. Company v. N. L. R. B., 321 U. S. 702.

<sup>45</sup>N. L. R. B. v. Clearfield Cheese Company, Inc., 213 F. 2d 70, 73 (C. A. 3); The Texas Company, 93 NLRB 1358, 1361; City Packing Company, 98 NLRB 1261, 1273.

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quest that he return despite the strike, and the suggestion that the Local "forget the International." Such violation is not minimized by the fact that a projected meeting between the Company and the Local alone was not held and the additional fact that there was further bargaining with both the Local and the International (as we have seen, the Local did later meet with the Company): ". . . the test is whether, under all the circumstances, the (act committed) **reasonably tends** to restrain or interfere with the employees in the exercise of rights guaranteed by the Act."<sup>46</sup> (My own emphasis here is on the phrase "reasonably tends.")

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Further, both by advertisement and letter to the employees, the Company promised to provide, as it thereupon did provide, automobile transportation to the plant. There is no evidence that such provision was necessary to protect against unlawful conduct any employees who wanted to work. It appears only to have been a convenience and inducement offered the employees, whose own problem it is to get to the job; and as a convenience so offered it constituted unlawful persuasion to return to work. If a promise to provide transportation is unlawful in a pattern of illegal opposition to the purposes of the Act,<sup>47</sup> then the promise and actual performance thereof are certainly so.

In several of the advertisements the strikers were notified that their jobs would remain open until April 20, when the Company would start to hire replacements. The advertisement of April 22 was addressed "To the former employees of Wooster Division who have vacated their jobs because of the strike," and it advised that they could return

<sup>46</sup>Blue Flash Express, Inc., 109 NLRB No. 85. See also N. L. R. B. v. Link-Belt Company, 311 U. S. 584, 488.

<sup>47</sup>Clearfield Cheese Company, Inc., 106 NLRB No. 80.



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if their jobs had not been filled. Similarly in individual letters to those who had not returned, the Company on April 15 reminded that the job was open until April 20, and concluded as follows: "If you do not return (the reference being to 'return by Monday, April 20'), I wish you the best of success in your new job whatever or wherever it may be." These letters were followed by others on April 22, addressed "To Those who Chose to Give up their Jobs at Wooster Division," and declaring inter alia, "When you did not report for work on April 20, it became apparent that you had decided to give up your job here." (The Company's letter of May 4 and subsequent)

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events will be considered infra in connection with the alleged violation of Section 8 (a) (3).) These advertisements and letters constituted unlawful threats of discharge to coerce employees to abandon the strike, in violation of Section 8 (a) (1) of the Act.<sup>48</sup> (They have not been alleged as separate violations of Section 8 (a) (3)). As for a finding of violation of Section 8 (a) (5) in this connection, where the Company is under an obligation to bargain,<sup>49</sup> the situation appears to be governed by the Board's decision in *Efeo Manufacturing, Inc.*,<sup>50</sup> where it was found that the interference did not indicate an intent by the employer to seek individual rather than collective bargaining.

One employee, Read, testified that Blythe would generally "come around, and (they) would visit, and it was about one thing or another"; that once, almost a month before the strike, Blythe told him he thought that they "could get

<sup>48</sup>Kerrigan Iron Works, Inc., 108 NLRB No. 118. Distinction is noted in Consolidated Western Steel Corporation, 108 NLRB No. 136, where it was held that distribution of termination slips to strikers may be only a "tactical maneuver," but not where they are in fact discharged.

<sup>49</sup>Cf. American Rubber Products Corp., 106 NLRB No. 10.

<sup>50</sup>108 NLRB No. 52.

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along and iron the thing out without any trouble" if Pappin were out of the negotiations. Read could not recall how these remarks "came up." Blythe denied making any such remark. Whether, if made, it was an expression of opinion and a natural reply to other statements, we can only conjecture. I find no violation here. Nor will I base any finding on hearsay references during the negotiations to alleged violative remarks which, to quote the General Counsel's brief, "the company representatives for the most part did not deny."

D. The alleged violation of Section 8 (a) (3)

Having found that the Company failed to bargain in good faith, I find further that the strike was called in protest against such violation of the Act and was therefore an unfair labor practice strike. It is clear from the evidence concerning the negotiations before and after

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the strike that the sine qua non of any settlement and contract with the Union was agreement on the issues of recognition and balloting; and that failure to agree on these issues prompted the strike. In making this finding, I have noted that Adams' references to the fact that many points were in issue were less certain and specific than was the testimony that the main contentions were in fact over these two points, and I resolve the issue of credibility in favor of the latter testimony. Further, and regardless of the extent of the differences, the testimony, as outlined supra, stands uncontradicted that strike action was decided upon at the meetings of employees because of the Company's refusal to bargain, and that the Company was so advised.<sup>51</sup>

<sup>51</sup>The history of the negotiations and this uncontradicted testimony persuade me that this was an unfair labor practice strike ab initio. The remedy would be the same, except for Brettin, Juchum, Kauffman, and Tinkey, infra, if it was an economic strike originally and converted to an unfair labor practice strike on April 21.

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Aside from this uncontradicted testimony, and even if other considerations were also present, an unfair labor practice strike would not thereby lose its character as such. As the Court declared in *N. L. R. B. v. Stilley Plywood Company, Inc.*:<sup>52</sup>

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As said by Judge Goodrich in *Berkshire Knitting Mills v. N. L. R. B.*, 3 Cir., 139 F. 2d 134, 137: "Where the causes contributing to a strike consist of unfair labor practices and employee desires for wage betterments, the latter should not excuse the employer from the legal consequences that flow from its conduct which transcends the permissible legal bounds under the National Labor Relations Act."

Further, "where the refusal to bargain is one of the causes of a strike, the burden rests upon the employer, so refusing to bargain, to show that the strike would have taken place even if he had not refused to bargain."<sup>53</sup>

The findings hereinafter made with reference to violation of Section 8 (a) (3) of the Act are based on the finding that this was an unfair labor practice strike. (Even were this an economic strike, reinstatement could be denied only where it appears that the employee had failed to seek to return, had been replaced, or his job eliminated.) It was stipulated that various employees "ceased work along with other employees on March 20, 1953." I find that all of such employees were strikers. (Beyond the formal terms of the answer, which left the legal conclusion to be drawn, no issue has been raised in this connection. In the Company's brief, these employees are referred to as strikers.)

<sup>52</sup>199 F. 2d 319, 320-321.

<sup>53</sup>*N. L. R. B. v. Barrett Co.*, 139 F. 2d 959, 961-962 (C. A. 7).

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As noted supra, the Company's statements by advertisement and letter are not alleged to have violated Section 8 (a) (3).<sup>54</sup> Such violation is alleged to have occurred when the employees applied for reinstatement on or about May 4.

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Before considering such applications and the action taken thereon, it may be advisable to note again the defense waiver and the further defense that the settlement between the Company and the Local governs the return of the alleged discriminatees. The rights of strikers survive<sup>55</sup> any attempt to modify or waive them by a group other than their certified representative. It is one of the purposes of the Act to protect such rights absent the elements of estoppel or abuse of Board process; there has been no claim that these latter elements are here present.

The right of unfair labor practice strikers to reinstatement on request is not limited to unfilled jobs where there has been replacement by new employees. Further, the burden being on the Company to justify failure to reinstate unfair labor practice strikers on application, and since replacement is not justification, the settlement agreement procedure of listing "employees who have been replaced or whose jobs have been eliminated" (emphasis supplied) does not meet such burden.

Testimony that jobs were eliminated as unnecessary is limited to five bench hand jobs in the tool room. Therefore, and in the absence of explanation to the contrary and of evidence that other jobs were lawfully and for economic reasons eliminated, we must regard all other jobs as available to the returning strikers, considering their right to

<sup>54</sup>Cf. *N. L. R. B. v. Clearfield Cheese Company, Inc.*, 213 F. 2d 70, 74 (C. A. 3).

<sup>55</sup>Cf. *supra*, at footnote 37.

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reinstatement. Aside from absence of proof that other jobs were not available, the Company's announcements and its action on rehiring some of the strikers later in the year indicate that it failed to recognize fully its obligation to recall strikers after they sought to return.

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Received in evidence was a letter from the Company to employees who had not yet returned to work: the employee is to report within 3 days if he wishes to return to work for the Company; jobs are not available for all, but those so reporting and not put to work will be placed on a list for a job (until July 31, 1953, according to the agreement with the Local). Since as noted we are interested in this connection in the action taken by the Company after employees reported, and not with the statements issued by the Company, we need not concern ourselves with the 3-day deadline set or nor with the later one of July 31. It does not appear that any employees were denied jobs because of those deadlines. Those cases where seniority rights were denied will be considered infra. In effect, we can look beyond the Company's letters as we evaluate the action taken and the evidence with respect to each employee. Nor shall we here rely on the Company's reference to "a job" as distinguished from the job previously held.

Neither did the employees sleep on their rights: the International promptly filed an amended charge which alleged discrimination against the employees. In all of this the Company was not injured; it had been and remained under obligation to reinstate the strikers. The question thus persists as alleged, whether any employees were unlawfully refused reinstatement.

Let us here note the obvious: unfair labor practice strikers are entitled to restoration to their jobs. It should be equally obvious that, having adopted methods of self-



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help, the strikers must apply for reinstatement.<sup>56</sup> Having rejected the Company's claim that its agreement with the Local fulfilled its obligation to bargain, we cannot consistently accept a portion of that agreement as recognition of applications to return by the employees; to do that would smack of entrapment of the Company. The agreements of May 2-5 stand or fall as one.

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As we weigh the evidence concerning the various employees allegedly discriminated against, we shall note those who returned to work, quit, or failed to report. There is no evidence against any employee to warrant a finding that he engaged in illegal mass picketing.

## 1. Kauffman, Tinkey, Brettin, and Juchum

Kauffman was a B operator, bench hand, in the tool-room on the first shift at \$1.75 per hour. When he reported on May 4, he was told that the Company was doing away with some bench-hand jobs. Questioned about other jobs, he said he was not interested because of the lower rate which they paid. Substantially the same thing occurred when Kauffman called 2 or 3 weeks later. Although he testified that "the tool grinding job was offered" to him on this second visit, it appears from his testimony rather that he was told that tool grinders would be needed and the jobs posted, and that he would be called if needed. On July 24 the Company called him, but again did not offer reinstatement to his former or equivalent employment. Although he testified that he was not "offered any specific work" until July 24, it is clear that he was not "interested" in lesser paying jobs and that he had so

<sup>56</sup>Such a situation is readily distinguishable from that of discriminatory discharge, where the burden is on the employer to offer reinstatement. See footnote 60, *infra*.

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stated on May 4. Unless his job or an equivalent was not in law available, the Company's duty to offer reinstatement was not here met.

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Tinkey was an A operator, bench hand, in the toolroom on the second shift at \$1.90. He reported on May 4 and was told his shift had been discontinued; also that his job had been filled when he failed to return on April 20. When he reapplied about the middle of May and asked for a tool grinding job, he was told that there were no openings. He was called in during the last week in July and offered a lower paying job on the drill press, which he refused, saying first that he did not want a production job, and later that he would not accept the cut in pay; he was told that no other job was open. Except for the question of elimination of his job, we must find discrimination against Tinkey.

Brettin was a toolroom bench hand operator on the first shift at \$1.90. Receiving a letter and thinking that the strike was over, he worked 1 day during the strike. When he reported on May 4, he saw his name on the replacement list. He saw Barker, the personnel manager, on May 6, but was not offered any job until the last week in July. On the latter occasion he was told that he "would never get back in the tool room," so he accepted a milling machine job which paid less, on the second shift. He was assigned to three different kinds of work in 3 days, during which he was unjustly criticized; on the fourth day he was "jumped on" by the foreman, who threatened to put him back to Grade B, at a lower rate. (He had never before done the type of work now being assigned to him.) He then decided that before he "got beat down (he) better leave"; he picked his tools up the next day. Later he testified that he had picked up his tools before this last

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short period of employment, actually about the middle of May, when he learned that he no longer had a toolroom job. Brettin's admitted inexperience on these new jobs rules out constructive discharge, the question of reinstatement to his former job aside. But that question remains; and the Company did not meet its obligation under the Act.

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Juchum was an A operator, bench hand, in the toolroom on the first shift at \$1.90. He reported on May 6, but was told that there was no job for him, and that "the chances were slim for his getting a job." On May 14 he said he would get another job if the Company could not use him. This is not to be considered a resignation; nor did the Company so regard it, for on July 24 it called and asked him to come in for other and lesser paying jobs. To this Juchum replied that he had a higher paying job and "was not interested in coming back" to the Company.

Although Seymour, works manager at the time of the strike, testified that it was decided to eliminate 5 of the 12 bench hand jobs,<sup>57</sup> the exhibits received indicate that 5 of the strikers returned to these jobs during the strike and 3 returned on May 4, for a total of 8. The latter 3 were senior to all of the others. Next in order of seniority had been Brettin, Juchum, and Kauffman, who were followed by 2 who had returned during the strike, Wertenberger and Bates. Tinkey followed, and then 3 who had returned during the strike.

In addition to the settlement and contract references to seniority, we have Seymour's testimony that the jobs

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<sup>57</sup>Seymour grouped these jobs without distinction although there were differences in rates paid. The General Counsel has likewise referred to them by type only. I adopt that pattern, and shall consider them as bench hand jobs without distinction.

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open on May 4 were filled according to seniority; there is no issue about recognition of seniority and its use in determining employees' relative rights. Seymour also testified that those who had remained during the strike were retained despite their relative lack of seniority, only those jobs which returning strikers had not yet filled being regarded as open.

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Brettin, Juchum, and Kauffman were entitled to the places filled by the three at the bottom of the seniority ladder, and in fact had priority over Wertenberger and Bates. The violation here is clear since those returning during the strike were not entitled by that fact alone to priority over strikers who reported at the termination of the strike. Prior to Juchum's withdrawal on July 24, Tinkey alone of the bench hand claimants had not been discriminated against, the need for elimination of some of these jobs not being in issue. There is no evidence of transferability between departments. There was thus no obligation on the Company to offer Tinkey a job elsewhere regardless of his experience and qualifications. But he was the eighth bench hand in order of seniority after Juchum's withdrawal on July 24, and the failure to offer him other than another and lesser paying job during the last week in July was discriminatory. In view of the testimony that there were only six or seven such jobs at the time of the hearing, reinstatement of Tinkey will not be recommended. He should be made whole for any loss suffered after July 24, 1953, and until elimination of a job would have warranted his discharge.

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## 2. Bahn, Brady, Gisinger, Snyder, and Westfall

Bahn, Brady, Gisinger, and Snyder reported for work on May 4, and Westfall on May 6; but they were never offered reemployment. In the absence of evidence that their jobs were eliminated, we can consider only the defense that these employees were replaced. But, as noted supra, that defense is insufficient.

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## 3. Jeffries and Cadmus

Jeffries and Cadmus reported for work on May 4, but were not then or later reemployed until August 31, 1953, and December 3 respectively, when they were hired as new employees without seniority. It does not appear that they were assigned to different work than that which they had done before the strike, but as new employees they did not receive the 15-cent pay increase which they would otherwise have received. The remedy of reinstatement in their case will include, as the equivalent of their former employment, full seniority together with payment of the increase in their hourly rate.

## 4. Bittner, Daly, Ross, and Moutoux

Bittner, Daly, Ross, and Moutoux reported on May 4, but did not get back on the job until June 3, 18, 22, and 29, respectively. No explanation was offered for the delay.<sup>58</sup>

## 5. Boyes

Boyes was an advance learner, at \$1.45. He reported on May 4, and resumed work on June 29 as a B operator, drill press, at \$1.55. There is no evidence that his new

<sup>58</sup>Cf. Universal Food Service, Inc., 104 NLRB 1, 16.



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job is less desirable than or not substantially equivalent to the former except for the difference of 5 cents per hour including the general wage increase. Boyes should therefore be reinstated at the higher rate in addition to being made whole for any loss suffered between May 4 and June 29 and, because of the lower rate, thereafter.

## 6. Fittler

Fittler reported on May 4, and resumed his former job with full seniority on May 11, but on the second shift whereas he had been employed

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on the first shift prior to the strike. He returned to the first shift on September 28. While it appears that he is entitled to be made whole for any loss suffered between May 4 and May 11, and I shall so recommend, General Counsel in his brief states that Fittler was rehired on May 4. If the latter statement be correct and the stipulation on the record in error, no remedy is here applicable, the shift change having been corrected; the finding of discrimination shall stand.

## 7. McKee

McKee resumed his former job on May 4, and his full seniority was recognized on May 11. He was assigned to the second shift, however, instead of to the first, where he had worked prior to the strike. Although discrimination is found, McKee lost his right to reinstatement to the first shift when he quit on June 10. In the absence of evidence that he quit because of the discrimination in shift, I shall make no recommendation for relief in McKee's case.

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## 8. Ostrom

Ostrom resumed work on May 4 but at a different job and at the rate which he had previously received, which did not include the 15-cent general increase. He was restored to his original job at the full rate on October 26, thus losing only 15 cents per hour between May 4 and October 26.

## 9. Patterson

Patterson was a lead man on the first shift at \$1.55. He reported on May 4 and returned to work on July 15, being hired as an A operator on the second shift, although he worked on the first shift

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for the first week on that job. He then accepted a transfer to lead man on the second shift on condition that it would not "interfere in any way with (his) getting on days." In November, with his elevation to the presidency of the Local, he requested transfer to the first shift and, told that no lead man position was available, requested and received work as an operator. As an A operator, during both the earlier and later periods, Patterson received 15 cents per hour less than he would have as lead man. He is entitled to reinstatement at the higher rate and to be made whole for loss suffered between May 4 and June 15 and, because of the lower rate, thereafter.

## 10. Poulson

Poulson, a setup man, returned to work on May 4 as an A operator at 15 cents an hour less than his former job now paid. His loss is measured by the change in classification and the wage difference.

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## 11. Totten

Totten was an advance learner, at \$1.45. He reported on May 4, and resumed work on June 29 as a B operator, drill press, at \$1.55. He should be made whole for any loss suffered between May 4 and June 29 and, because of the lower rate, thereafter until July 13, 1953. It was stipulated that he quit on the latter date. The reason for such quitting not being shown, whatever right he may have had, to restoration to his former classification was then terminated.

## 12. Treece

Treece was a B operator at \$1.50 per hour. He reported on May 4, and returned to work as a sweeper on July 27 at \$1.35. He is

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entitled to restoration to his former classification, and to be made whole for any loss of pay suffered between May 4 and July 27 and, because of the lower rate, thereafter.

## 13. Baird

Baird was an advance learner, grinder, on the first shift at \$1.35 per hour. When he reported on May 4, he was told that nothing was available for him. On July 11 the Company called and offered him his old job, but on the second shift, and he explained that he was "not interested in employment on the second shift as he had a boys' baseball team he was interested in during the early evening hours, and also went to prayer meeting every Wednesday night." That relative seniority was considered by departmental groups and was therefor not affected by a change in shift, as noted by the Company in this connection, does not obliterate the fact of the shift dif-

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ference.<sup>59</sup> Baird was never offered that reinstatement to which he was entitled.

## 14. Burnett

Burnett was a chucker, A operator, on turret lathes, first shift, at \$1.65. When he reported on May 4, he was told that there was no work for him and that he would be called if there were an opening before July 31. The Company called him on July 13, and offered a different job on the second shift. Burnett explained that "he could not work nights as his wife worked nights, and he had to stay home with the children." Here again was no offer of reinstatement.

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## 15. Crisco

Crisco was an advance learner, turret lathes, on the first shift at \$1.40. He reported on May 4, and was told that no work was then available for him. The Company called him on July 2; he reported on July 6, when he was offered an apparently acceptable job at a proper rate, but on the second shift. He refused to work on that shift. He applied again in September, and on October 1 was hired for his old job, first shift, at full pay but as a new employee without seniority. "Some time later" he was transferred to the night shift at his own request. As in Baird's case, the Company argues that the job offered Crisco was "substantially equivalent employment"; this is emphasized here by Crisco's later request for transfer to the second shift. Again I find that the offer earlier made to him was not of a substantially equivalent job. Nor is there evidence that in July Crisco regarded it as equivalent and capriciously refused it. Reinstatement in Crisco's

<sup>59</sup>Stilley Plywood Company, Inc., 94 NLRB 932, 934.

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case will include full seniority, and he is entitled to be made whole for any loss of pay suffered between May 4 and October 1.

## 16. Frease

When he reported on May 4, Frease was told that there was no opening for him. The Company called him on or about July 24, and offered him another job at a lower rate and on the second shift. (His former job had been on the first shift.) He explained that his wife did not want him to work nights. As in the case of Burnett, definite and sufficient objection for one reason does not imply waiver or acceptance of other conditions, i.e., different job and lower rate.

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## 17. Lance

Lance reported on May 8, and was told that he had been replaced. Asked whether he would take a different job at a lower rate, he replied that he wanted only an electrician's job. (He was an A operator, electrician.) On or about July 24, the Company called and offered him several lower paying production jobs, which he again refused for the previously stated reason. None of these offers was of substantially equivalent employment.

## 18. Haidet

Haidet reported on May 4, and was told that he had been replaced. The Company called him on July 10, and he went in on July 11, when he was offered a different job on the second shift, but at his former rate plus 15 cents and the shift differential. He explained that he was working elsewhere and asked for a few days to think it over. When he returned, he said "that he would not accept the job, that when he told Crater Motors of the Respondent's



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offer, Crater Motors gave him a guaranteed weekly salary plus commissions and that he did not want to work nights." He asked Mr. Barker "if there was any chance of getting on days later in his old department. . . ." Statement of two possible reasons, one of attractive terms elsewhere, and the other of an undesirable condition on reinstatement, opens the door to argument concerning the reason for rejection of the Company's offer. Under such circumstances I would not, ignoring the reference to the other employment, find that the Company's offer was rejected because of the shift condition. But the additional query concerning the possibility of day work would indicate that the rejection was in fact based on the shift element. The uncertainty is underscored by the General Counsel's statement that he

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does not know whether Haidet would have accepted a job on the day shift despite the salary guarantee elsewhere. (Haidet did not testify. As with most of the other alleged discriminatees, the evidence here was received by stipulation.) Under the circumstances, as I stated on the record, I will not find that the offer to Haidet was inadequate. His period of loss, if any, was thus terminated on July 11, 1953.

## 19: Jordan

Jordan moved from Wooster about March 30, 1953, not notifying either the Company or the Post Office of his new address. It was stipulated that he received some letters from the Company, and we can only speculate that they "may have been forwarded to him from Wooster in some way." It was further stipulated that he knew of the strike termination, but has never reported back to the plant. The Company on May 4 sent him a registered letter, addressed

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to him in Wooster at the last address shown on the company records, advising him of the termination of the strike and requesting him to return; this letter was returned as undeliverable. Even if a reinstatement letter is not an "offer" if not delivered,<sup>60</sup> the burden of offer, as noted *supra*, was not on the Company. As did other strikers, Jordan should have reported for work after the strike; his failure to do so constituted an abandonment. I find no discrimination here.

## 20. Myers

Myers reported on May 4, and was told that his job had been eliminated; there might be an opening later. The Company called him on July 27 and offered another job at a lower rate. Myers "said he

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thought he would stay at Koontz' Nursery, where he was then working, and which he liked very much." Whether the attractiveness of the new employment was based on the lower rate now offered him, we will not speculate. I find no discrimination against Myers after June 27.

## 21. McHenry

On May 4, McHenry was told that his job had been eliminated. On July 24 the Company advised him that several lesser paying production jobs were open, but he replied that he was not interested in them, declining to come to the plant to discuss them. No offer of substantially equivalent employment was made to McHenry.

## 22. Snoddy

When he reported on May 4, Snoddy was told that there were no openings for him at that time. About

<sup>60</sup>Jay Company, Inc., 103 NLRB 1645.

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July 24, the Company called and suggested another and lower rate job. Snoddy replied that he was interested only in his old job, at the old rate plus the increases. When he inquired concerning second shift (he had worked on the first shift) openings and rates, Barker told him to come in. Snoddy came in at 8 a.m. on July 25, was told that Barker would be in soon, and was asked to wait. He refused to wait, explaining that he was helping his father to farm, and that he did not see any point in waiting. It is clear that Snoddy's farming activities did not at that time make him unavailable for employment; he had inquired the day before and had come in. (Subsequent availability can be considered in connection with compliance.) As for whether or not there was "any point" in waiting, resort to fundamentals will indicate where obligation lay. Snoddy on May 4 met the requirement that he report for work. The Company's offer of July 24 did not fulfill

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its responsibility. Nor was the suggestion that Snoddy come in on July 25 an offer.<sup>90a</sup> Asking him to wait neither constituted an offer nor obliged him further to remain in the hope that one might be forthcoming. If on May 4, July 24, or thereafter the Company had available a job suitable for proper offer, it was incumbent on it to make such offer. Failing to do so, whether or not a job was available under the circumstances herein, the Company continued in its liability.

## 23. Stanford

On May 4, Stanford was told that Company had nothing for him. He again inquired about June 5, and Barker

<sup>90a</sup> Arrow Photo Service, Inc., 108 NLRB No. 198.

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told him that he did not know whether he would be called back or when. Stanford "thereupon quit his job and delivered a signed quit slip to Mr. Barker." We need not grope for Stanford's motive or his purpose in quitting. By that act, he relieved the Company of obligation to him beyond June 5.

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### III. The effect of the unfair labor practices upon commerce

The activities of the Company set forth in Section II, above, occurring in connection with the operations described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

### IV. The remedy

Since it has been found that the Company has engaged in and is engaging in certain unfair labor practices affecting commerce, I shall recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

It has been found that the Company refused to bargain collectively with the International thereby interfering with, restraining, and coercing its employees. I shall therefore recommend that the Company cease and desist therefrom and also, upon request, bargain collectively with the International with respect to wages, hours, and other terms and conditions of employment, and embody in a signed contract any understanding reached.

It has been further found that the Company, by refusing to reinstate McKee and the employees hereinafter

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named, discriminated against them in respect to their hire and tenure of employment in violation of Section 8 (a) (3) of the Act. I shall therefore recommend that the Company offer to Kauffman, Brettin, Bahn, Brady, Gisinger, Snyder, Westfall, Jeffries, Cadmus, Boyes, Patterson, Poulson, Treece, Baird, Burnett, Crisco,

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Frease, Lance, McHenry, and Snoddy immediate reinstatement to their former or substantially equivalent positions,<sup>61</sup> without prejudice to their seniority and other rights and privileges, dismissing if that be necessary any replacements hired; if, because of a change in the Company's operations, there are insufficient positions remaining for all these employees, the available positions should be distributed among them without discrimination because of their union membership or activity, following such system of seniority or other nondiscriminatory practice as heretofore has been applied in the conduct of the Company's business. Those for whom no employment is available after such distribution should be placed on a preferential hiring list for all jobs for which they are qualified, with priority determined among them by such system of seniority or other nondiscriminatory practice as heretofore has been applied in the conduct of the Company's business, and thereafter in accordance with such list should be offered reinstatement as positions become available and before any other persons are hired for such work.<sup>62</sup> The Company shall also make whole<sup>63</sup>

<sup>61</sup>The Chase National Bank of the City of New York, San Juan, Puerto Rico Branch, 65 NLRB 827. Reinstatement of Jeffries, Cadmus, Boyes, and Patterson shall include grant of a rate of pay which will at least equal their respective rates immediately prior to the strike plus the general 15-cent increase.

<sup>62</sup>Central Kentucky Broadcasting Company, 93 NLRB 1298, 1299, 1309.

<sup>63</sup>This term shall include payment of the 15-cent general wage increase and, where applicable, the 6-cent shift differential.



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the employees so named for any loss of pay they may have suffered by reason of the discriminatory action aforementioned by payment to each of them of a sum of money equal to that which he would normally have earned less his net earnings<sup>64</sup> which sum shall be computed<sup>65</sup> on a quarterly basis during

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the period from the discriminatory refusal<sup>66</sup> to reinstate to the date of a proper offer of reinstatement. The Company shall further make the following employees whole for any loss of pay so suffered during the respective periods: Bittner, Daly, Ross, Moutoux, Fittler, Ostrom, Totten, Haidet, Myers, and Stanford from May 4, 1953, to June 3, 18, 22, and 29, May 11, October 26, July 13, and 11, and June 27, and 5, 1953; Juchum from May 6 to July 24, 1953, and Tinkey from July 25, 1953, to the date of elimination of his job as explained *supra*. It is also recommended that the Board order the Company to make available to it upon request payroll and other records to facilitate the checking of the amount of back pay due.<sup>67</sup>

It has been further found that the Company, by solicitation of employees to abandon the strike and by threat of loss of employment unless they abandoned the strike, interfered with, restrained, and coerced its employees in violation of Section 8 (a) (1) of the Act. I shall therefore further recommend that the Company cease and desist therefrom.

<sup>64</sup>Crossett Lumber Company, 8 NLRB 4440. See also Republic Steel Corporation v. N. L. R. B., 311 U. S. 7.

<sup>65</sup>F. W. Woolworth Company, 90 NLRB 289, 291-294.

<sup>66</sup>May 4, 1953, is the date of refusal in each of these cases except Westfall's and Lance's, which are May 6 and 8 respectively. Crisco's reinstatement covers seniority only, and his loss of pay ended on October 1, 1953.

<sup>67</sup>F. W. Woolworth Company, *supra*, at 294.

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The unfair labor practices found herein indicate a purpose to limit the lawful concerted activities of the Company's employees. Such purpose is related to other unfair labor practices, and it is found that the danger of their commission is reasonably to be apprehended. I shall therefore recommend a broad cease and desist order, prohibiting infringement in any manner upon the rights guaranteed in Section 7 of the Act.

For the reasons stated in the subsection entitled "The alleged violation of Section 8 (a) (3)," I shall recommend that the complaint be dismissed insofar as it alleges the discriminatory refusal to reinstate Jordan.

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Upon the basis of the above findings of fact and upon the entire record in the case, I make the following:

**Conclusions of Law**

1. International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, and Local Union No. 1239, International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, are severally labor organizations within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees at the Company's Wooster, Ohio, plant, including plant clerical employees, stock and tool handlers, excluding all production control department employees, industrial and product engineering department employees, statistical quality control department employees, timekeepers, checkers, laboratory employees, all office employees and office clerical employees, nurses, professional employees, guards and watchmen as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

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3. International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, was on December 18, 1952, and at all times since has been the exclusive representative within the meaning of Section 9 (a) of the Act, of all employees in the aforesaid unit for the purposes of collective bargaining.

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4. By refusing to bargain collectively with International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, as the exclusive representative of the employees in the appropriate unit, Wooster Division of Borg-Warner Corporation has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By discriminating in regard to the hire and tenure of employment of Mildred Bahn, Peter Baird, Ola Bittner, Henry Boyes, Rosanna Brady, George Brettin, Donald Burnett, Helen Cadmus, Clinton Crisco, Bernadine Daly, Harry Fittler, Dorrance Frease, Margaret Gisinger, Paul Haidet, Helen Jeffries, Michael Juchum, David Kauffman, Henry Lance, Richard McHenry, Harold A. McKee, Merrill Moutoux, Charles Myers, Robert Ostrom, Wayne W. Patterson, Albert Poulson, Robert Ross, Wesley Snoddy, Dorothy Snyder, Clifford Stanford, John Tinkey, Wallace Totten, Emmett Treece, and Clara Westfall, thereby discouraging membership in a labor organization, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

6. By such refusal to bargain and discrimination and by soliciting its employees to abandon a lawful strike and threatening loss of employment unless they abandoned the strike, thereby interfering with, restraining, and coercing its employees in the exercise of the rights

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guaranteed in Section 7 of the Act, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

7. The aforesaid labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

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8. The Company has not engaged in unfair labor practices within the meaning of the Act by failing to reinstate Warne E. Jordan.

**RECOMMENDATIONS**

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that the Respondent Company, Wooster Division of Borg-Warner Corporation, Wooster, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, as the exclusive representative of all its employees in the appropriate unit with respect to rates of pay, wages, hours of employment, or other conditions of employment;

(b) Discouraging membership in International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, or in any other labor organization of its employees by refusing to reinstate any of its employees or discriminating in any other manner in respect to their hire and tenure of employment, or any term or condition of employment;

(c) Soliciting its employees to abandon a lawful strike and threatening loss of employment unless they abandoned the strike; and

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(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, or any other labor organization, to bargain collectively through representative

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of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which I find will effectuate the policies of the Act:

(a) Offer to Mildred Bahn, Peter Baird, Henry Boyes, Rosanna Brady, George Brettin, Donald Burnett, Helen Cadmus, Clinton Crisco, Dorrance Frease, Margaret Gisinger, Helen Jeffries, David Kauffman, Henry Lance, Richard McHenry, Wayne W. Patterson, Albert Poulson, Wesley Snoddy, Dorothy Snyder, Emmett Treece, and Clara Westfall immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, in the manner set forth in the section entitled "The remedy," above;

(b) Make said employees and Ola Bittner, Bernadine Daly, Harry Fittler, Paul Haidet, Michael Juchum, Merrill Moutoux, Charles Myers, Robert Ostrom, Robert Ross, Clifford Stanford, John Tinkey, and Wallace Totten whole for any loss they may have suffered by reason of the interference, restraint, coercion, and discrimination against



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them, in the manner set forth in the section entitled "The remedy," above;

(c) Post at its plant in Wooster, Ohio, copies of the notice attached hereto and marked Appendix C. Copies of said notice, to be furnished by the Regional Director for the Eighth Region, shall, after being duly

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signed by the Company's representative, be posted by the Company immediately after receipt thereof, and be maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material; and

(d) Notify the Regional Director for the Eighth Region, in writing, within twenty (20) days from the receipt of this Intermediate Report and Recommended Order, what steps have been taken to comply herewith.

It is further recommended that unless the Company shall within twenty (20) days from the receipt of this Intermediate Report and Recommended Order, notify said Regional Director, in writing, that it will comply with the foregoing recommendations, the Board issue an order requiring said Company to take the action aforesaid.

It is further recommended that the complaint be dismissed insofar as it alleges violations of the Act not herein found.

Dated at Washington, D.C., this 15th day of September 1954.

(s) Lloyd Buchanan,  
Trial Examiner.

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## SCHEDULE A

Mildred Bahn	David Kauffman
Peter Baird	Henry Lance
Ola Bittner	Richard McHenry
Henry Boyes	Harold A. McKee
Rosanna Brady	Merrill Moutoux
George Brettin	Charles Myers
Donald Burnett	George D. Orr
Helen Cadmus	Robert Ostrom
Clinton Crisco	Wayne W. Patterson
William Dilgard	Albert Poulson
Bernadine Daly	Robert Ross
Harry Fittler	Wesley Snoddy
Dorrance Frease	Dorothy Snyder
Margaret Gisinger	Clifford Stanford
Paul Haidet	John Tinkey
Helen Jeffries	Wallace Totten
Warne E. Jordan	Emmett Treece
Michael Juchum	Clara Westfall

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## APPENDIX B

Page 95, Line 10

"Union" should be corrected to "unit."

Page 95, Line 16

"It" should be "he."

Page 100, Line 19

Omit "we."

Page 137, Line 24

"More than" should be inserted between "when" and "50."

Page 138, Line 23

"Mr. Martin" should be "Mr. Davis."

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Page 155, Line 19

"Are" should be "were."

Page 176, Line 20

"Between" should be "with."

Page 210, Line 21

"Would" should be "should."

Page 210, Line 22

"Affiliated" should be "and."

Page 220, Line 11

"I" should be "you."

Page 223, Line 6

"Time" should be "premises."

Page 226, Line 1

"That" before "meeting" should be "a."

231, Line 7

"Parts of the agreement" should be "parties to the agreement."

Page 232, Line 9

"Over" should be "every."

Page 233, Line 22

"Board" should be "Board's decision."

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Page 234, Line 4

"Strike" should be "strike ballot."

Page 234, Line 8

Omit the words "local union" before "agreement."

Page 245

Last line of the page beginning with "Mr. Homer Buttdorff" to the end of the sentence, should be omitted as it is unintelligible and counsel is unable to determine what the answer actually was.

Page 246, Line 4

"Would pass" should be changed to "were passed."

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Page 254, second last line

"Local union" should be omitted, and on the last line "in the Pesco local Union." should read "in the name of the International local union."

Page 255, Line 5

"Basic local union" should read "International local union."

Page 257, Line 6

Beginning with "The Company took the position that it" should read "The Company's position."

Page 257, Line 14

"With the local union" should be "in the name of the local union."

Page 258, Line 5

"Local union" should be changed to "Company."

Page 258, Line 21

"Offer" should be "get off."

Page 258, Line 22

"On the hill" should be "at the hilltop."

Page 261, Line 21

"Detroit" should be "Toledo."

Page 262, Lines 1 through 3

The statement beginning with "He stated" and ending with the word "union" should be omitted, as it is unintelligible and the parties are unable to determine what was actually said.

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Page 268, Line 12

"Vote" should be "go."

Page 273, Line 21

Omit the word "and."

Page 276, Line 13

"60" should be "61."

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Page 280, Lines 18 and 25

"Mr. Martin" should be "Mr. Goerlich."

Page 305, Line 11

"He had served" should be "we had signed."

Page 305, Line 14

"As" should be "is."

Page 308, Lines 11 through 15

This should be omitted as it is unintelligible.

Page 336, Line 16

"I wouldn't accept it" should be "They wouldn't accept it."

Page 337, Lines 3 and 4

"If the Company concedes to the Union's position" should read "If the Union concedes to the Company's petition."

Page 418, Line 7

"Beyes" should be "Boyes."

Page 560, Line 16

"Objected to" should be "subject to the secret ballot."

Page 570, Line 22

"Called" should be "told." And "said" should be omitted.

Page 570, Line 23

"Have been" should be "be."

Page 570, Line 24

"Of the International" should be inserted after "local union."

Page 578, Line 14

"You" should be "they."

Page 690, Line 7

"Technical" should be "tactical."



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Page 120, Line 10

"Breath" should be "breast."

Page 376, Line 15

Should be "representatives and high priced lawyers present."

Page 553, Line 9

Should be changed to read "There had not been an awful lot of talk, that is, discussions on."

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## APPENDIX C

NOTICE TO ALL EMPLOYEES  
PURSUANT TO

THE RECOMMENDATIONS OF A TRIAL EXAMINER of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will bargain upon request with International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment, or other conditions of employment, and embody in a signed agreement any understanding reached. The bargaining unit is:

All production and maintenance employees including plant clerical employees, stock and tool handlers, excluding all production control department employees, industrial and product engineering department employees, statistical quality control department employees, timekeepers, checkers, laboratory employees, all office employees and office clerical employees, nurses, professional employees, guards and watchmen as defined in the Act.

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~~We Will Not~~ discourage membership in International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, or any other organization of our employees by refusing to reinstate any of our employees or discriminating in any other manner in respect to their hire or tenure of employment, or any term or condition of employment.

~~We Will Not~~ solicit our employees to, or threaten loss of employment unless they do, abandon any lawful strike.

~~We Will Not~~ in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

~~We Will~~ offer to Mildred Bahn, Peter Baird, Henry Boyes, Rosanna Brady, George Brettin, Donald Burnett, Helen Cadmus, Clinton Crisco, Dorrence Frease, Margaret Gisinger, Helen Jeffries, David Kauffman, Henry Lance, Richard McHenry, Wayne W. Patterson, Albert Poulson, Wesley Snoddy, Dorothy Snyder, Emmett Treece, and Clara Westfall immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other

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rights and privileges, and make them and Ola Bittner, Bernadine Daly, Harry Fittler, Paul Haldet, Michael Juehum, Merrill Moutoux, Charles Myers, Robert Ostrom, Robert Ross,

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Clifford Stanford, John Tinkey, and Wallace Totten whole for any loss of pay suffered as a result of the interference, restraint, coercion, and discrimination against them.

All of our employees are free to become, remain, or to refrain from becoming or remaining members in good standing in International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, or any other labor organization except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act.

Wooster Division of Borg-Warner  
Corporation  
(Employer)

Dated..... By.....  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof and must not be altered, defaced, or covered by any other material.

**DECISION AND ORDER**

Case No. 8-CA-830

On September 15, 1954, Trial Examiner Lloyd Buchanan issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices and recommended that those allegations of the complaint be dismissed. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief, and the General Counsel filed a brief in support of the Intermediate Report. At the request of the Respondent, oral argument was heard before the Board on June 21, 1955. The Respondent, the General Counsel and the charging Union were represented by counsel and participated in the argument.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report; the exceptions, briefs, and arguments of the parties, and the entire record in the case, and hereby adopts the conclusions and recommendations of the Trial Examiner with the following exceptions, modifications, and additions as noted below.

1. We agree with the Trial Examiner's finding that the Respondent's recognition and employee ballot proposals were not required bargainable matters and that by insisting on their inclusion in the agreement, Respondent

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thereby failed to bargain with the Union, in violation of Section 8 (a) (5) of the Act.

It is undisputed that International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, herein referred to as the Union, was certified by the Board on December 8, 1952, as the bargaining representative in a unit of production and maintenance employees at the Respondent's newly established Wooster, Ohio, plant. As more fully discussed in the Intermediate Report, on January 23, 1953, the Union submitted its contract proposal. The proposed contract provided that both International and its Local Union No. 1239, which had been chartered since the Union's certification, be recognized as the exclusive bargaining agent for the employees in the appropriate unit. The Union also proposed no-strike and union-shop clauses.

On February 9, 1953, the Respondent submitted the non-economic part of its counterproposal. As to the items here in dispute, the Respondent's proposals provided in substance that the Respondent recognizes "Local Union No. 1239, affiliated with the International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (UAW-CIO)" as the exclusive bargaining agent for the employees in the unit, and with respect to the employee ballot proposal, they provided that on disputed issues not subject to a contractual provision for arbitration, no strike could be called unless a majority of the employees in the bargaining unit voted by secret ballot whether to accept or reject the Respondent's "last" offer or any succeeding offer. The employee ballot clause further specified that the question of the termination of the agreement shall be one of the issues subject to the secret ballot.



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Upon the submission of the counterproposals, Pappin, International representative and chief negotiator of the Union, told the Respondent's representatives that the recognition proposal was contrary to the Board's certification and the Union's constitution and that the Union would not "under any circumstances" accept the employee ballot proposal. The Respondent's negotiators took the position that, as plant problems were local, they should

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be settled on a local basis with local people, and that therefore emphasis should be on dealing with local representatives of the Union. With regard to the employee ballot proposal, the Respondent stated that it was a means of finding out whether management was doing a good job, for if a majority of the employees in the unit opposed any of the Respondent's proposals, then it was an indication that perhaps management ought to reexamine its position, but if a majority did not oppose, then it was a good indication that management was doing a good job.

In the ensuing meetings neither party retreated from its position, although it appears that at one stage in the negotiations the Union proposed that the recognition clause read: "International Union, United Automobile, Aircraft & Agricultural Implement Workers; Local Union No. 1239" and the Respondent countered with the proposal that it read: "Local Union No. 1239, International Union, United Automobile, Aircraft & Agricultural Implement Workers." Adams, Respondent's principal negotiator, rejected the Union's proposal because he believed that the Union's proposal contemplated recognition of the International, whereas, he stated, it was the Company's thought that the agreement should be with the Local. Blythe, president of the Wooster Division, testified that the Respondent's position at all times during the negotia-

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tions was that the agreement should be only with the Local, and that at no time did the Respondent's position change in that respect.

Negotiations were only temporarily halted by the strike, which the Union called on March 20, with respect to certain economic demands not here involved. But the meetings, which resumed on March 31, did not bring any change in the positions of the parties on either the recognition or employee ballot proposal. On the contrary, at the following meeting on April 17, the Respondent made its employee ballot proposal more embracing, by adding the questions of the amendment and modification of the agreement as matters which were subject to the employee ballot. At the next and final meeting on April 21 between the Union and the Respondent, Pappin asked Adams if the Respondent would agree to make the International a party to the agreement and

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eliminate its position with respect to nonunion employees if the Union were to concede on all noneconomic proposals of the Respondent. Adams replied that the Union should take the proposals as is and added that he considered them fair. Abandoning further negotiations with the Respondent, the Union on April 25 recommended to the president of the Local that the strikers return to work. On May 2, a settlement agreement was executed between local representatives and the Respondent, after the Union's executive board had apparently approved such settlement agreement. This agreement was thereafter approved by local membership, and on May 5 a collective bargaining agreement was entered into between the Local and the Respondent. The agreement recognized the Local as the exclusive bargaining agent and incorporated the disputed employee

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ballot\* proposal. The Union filed its initial charge on April 7, 1953.

It is abundantly clear to us from the record as a whole that the Respondent was not merely proposing its recognition and employee ballot clauses as matters which the Union could voluntarily accept or reject. On the contrary, it appears that the Respondent, was adamantly insisting on the inclusion of these two clauses as a condition precedent to the execution of any agreement. This conclusion is well supported by the fact that, notwithstanding the Union's rejection of these clauses at the outset, the Respondent nevertheless utilized the bargaining process to require continued bargaining and capitulation as the price for the contract eventually made with the Local.

In this posture of the facts, we, unlike our dissenting colleague believe that the Respondent's liability under Section 8 (a) (5) turns not upon its good faith, but rather upon the legal question of whether the proposals are obligatory subjects of collective bargaining. For, if the proposals are permissible statutory demands, the Respondent was privileged to adamantly insist upon bargaining as to them and the Union could not refuse to so bargain; on the other hand, if they were not, the converse is true. While, as indicated below, we respectfully disagree with the substantive resolution of a similar legal issue by one Court of Appeals in the Allis-Chalmers case,<sup>1</sup> upon which the dissent

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relies, it is noted that the Court there applied the same legal principle as we do here. Contrary to the interpretation of our dissenting colleague, we do not hold that the Respondent "had no right to put these proposals on the

<sup>1</sup>Allis-Chalmers Manufacturing Company v. N. L. R. B., 213 F. 2d 374 (C. A. 7).

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bargaining table." On the contrary, we recognize that the Respondent could make these proposals or any other proposal not in conflict with the provisions of the Act. However, we are here concerned not with what the parties might do by mutual consent beyond the obligatory mandate of the statute, but with what the obligation to bargain under the Act requires the parties to do. Of course, that obligation encompasses good faith bargaining, but only with respect to wages, hours and conditions of employment, as enumerated in the Act.<sup>2</sup> Thus, a union might propose that an employer reduce the salaries of its officers as a means of obtaining wage increases for employees, and the employer may voluntarily agree, but it does not follow that the employer is required to bargain about such a matter. Likewise, while a union might agree to any of the following proposals, it has been held that an employer cannot require bargaining by a union with respect to organizing competitors,<sup>3</sup> posting of performance bonds,<sup>4</sup> complying with State licensing requirements,<sup>5</sup> or accepting oral<sup>6</sup> or members only contracts.<sup>7</sup> To hold, as our dissenting colleague suggests, that good faith is the only basis for determining whether or not a union or employer has fulfilled its obligation to bargain under Section 8 (a) (5) of the Act, means, in effect, an amendment to the Act's statement of the required subject of

<sup>2</sup>To support the good faith test believed by the dissenter to be here controlling, he relies on the opinion of the Supreme Court in *American National Insurance Co.* (343 U. S. 395). However, we do not view that case as apposite. The clause in that case was a statutory bargaining proposal as it involved wages and hours and therefore under the holding of that case, the legality of the employer's insistence upon it could be resolved only by application of the good faith standard.

<sup>3</sup>*N. L. R. B. v. George Pilling & Son Co.*, 119 F. 2d 32 (C. A. 3).

<sup>4</sup>*Jasper Blackburn Products Corp.*, 21 NLRB 1240.

<sup>5</sup>*N. L. R. B. v. Dalton Telephone Company*, 187 F. 2d 811 (C. A. 8), cert. denied 342 U. S. 824.

<sup>6</sup>*H. J. Heinz Co. v. N. L. R. B.*, 311 U. S. 514.

<sup>7</sup>*McQuay-Norris Manufacturing Co. v. N. L. R. B.*, 116 F. 2d 748 (C. A. 7), cert. denied 313 U. S. 565.



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collective bargaining and that they are required under the Act to bargain about matters wholly unrelated to wages, hours, and other conditions of employment.

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*The Recognition Clause*

Contrary to the implication of our dissenting colleague, the dispute over the Respondent's proposed recognition clause was not one of semantics but one of substance. The Respondent recognized that the Local and the International were, in fact, separate entities, but nevertheless insisted upon executing a contract with the Local to the exclusion of the International, the duly certified representative. It is well settled by numerous Board and Court authorities that under the Act the employer is obligated upon request to accord exclusive and unequivocal recognition to the statutory representative, to bargain with it, and to incorporate any agreement reached in a written contract signed by both parties; and that the fulfillment of this duty is not a subject of obligatory bargaining.<sup>8</sup> In rejecting this settled law, our dissenting colleague is giving controlling significance to the fact that the Respondent, during the negotiations, bargained with the International's representative, and that the recognition clause originally proposed by the International included the name of the Local as a separate party, whereas the certification did not do so.

<sup>8</sup>See *McQuay-Norris Manufacturing Co.*, supra, where the Board stated ". . . the question of recognition has long possessed a peculiar significance in labor relations. And we think it was the intention of the Act to eliminate controversy over issues of this sort by requiring employers, as part of the 'practice and procedure of collective bargaining,' to recognize and deal with the majority representative as exclusive bargaining agent. This purpose can be achieved only if such recognition is fully and frankly given rather than half withheld." See also *N. L. R. B. v. Louisville Refining Co.*, 102 F. 2d 678 (C. A. 6); *N. L. R. B. v. Griswold Manufacturing Co.*, 106 F. 2d 713 (C. A. 3); *Aldora Mills*, 79 NLRB 1, enf'd 180 F. 2d 580 (C. A. 5); *Simplicity Pattern Company, Inc.*, 102 NLRB 1278; *Taormina Company*, 94 NLRB 884; *Standard Generator Service Company of Missouri, Inc.*, 90 NLRB 790.



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However, in so doing, he overlooks that part of the bargaining obligation which requires an employer to recognize and contract with the named certified representative. It is abundantly clear on this record, as stated above, that the Respondent adamantly refused to sign any agreement which even included the certified representative as a party thereto. Nor did the fact that the International's proposal included the Local as a co-party to the contract, a not uncommon practice, make the subject of recognition a matter of obligatory bargaining. Under applicable legal principles, the Respondent could have accepted the variance in the certification by the International, but was not required under the Act to do so. Indeed, the Respondent had the right to refuse to contract with the Local as a

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co-representative. But the record shows that the International's initial request for inclusion of the Local as a co-party to the agreement was not an issue in the case at all. On the contrary, it was the Respondent's insistence upon making the Local not only a party to the agreement but, in complete derogation of the certificate, the only party empowered to represent the employees. The designation of representatives pursuant to a Board election, is the function of this Board. This agency, accordingly, designated and certified the bargaining agent in this case. A demand that the legal status thus obtained be bargained away cannot be countenanced if the purposes of the statute are to be realized. What has been won through the Board's election processes need not be re-won at the bargaining table.

*Employee ballot proposal*

Under the proposal of the Respondent, the Union was prohibited from calling a strike or from amending, modi-

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fyng, or terminating the agreement, unless its action in so doing, in effect, had the approval of a majority of both union and nonunion employees. The ballot procedure required a secret ballot among the employees on whether to accept or reject the Respondent's last offer and on whether the contract should be amended, modified or terminated. The record shows, as the Trial Examiner found, that this proposal was adamantly insisted upon because of the Respondent's expressed concern that the Union might not truly represent the wishes of a majority of the employees. Quite apart from the Respondent's good faith in seeking its objective, we do not believe that the subject of protecting employees from the speculative arbitrariness of their duly selected exclusive bargaining representative is an obligatory subject of collective bargaining.<sup>9</sup>

It appears self-evident that a representative system necessarily involves trusting the agent with discretion not subject to review by those it represents as to each exercise thereof, particularly at the instance of an outside party. It is the pattern traditionally followed in the labor movement in this country and the concept embodied in the Act. As the Supreme Court stated, the Act, "has been considered to absorb and give statutory approval to the philosophy of bargaining as worked out in the labor movement in the United States."<sup>10</sup> Under the practice of collective bargaining as thus developed, it is

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customary to leave the decision as to demands to be made upon the employer, the sanction to be resorted to in support of the demands, and the content of the contract

<sup>9</sup>Cf. *Brooks v. N. L. R. B.*, 348 U. S. 96.

<sup>10</sup>*N. L. R. B. v. American National Insurance Company*, 343 U. S. 395, 408, quoting with approval from *Telegraphers v. Railroad Express Agency*, 321 U. S. 343, 346.

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ultimately entered into, up to the majority representative leaving to internal procedures of the union the extent to which these may be ratified by the membership of the union or employees generally.<sup>11</sup> The legislative history of the Act as it was originally enacted makes it abundantly clear that Congress was fully aware of all the implications arising out of writing the majority rule principle into the Act, including the fact that those in the minority were not to have an effective voice in the collective bargaining negotiations. Indeed, this view of the intendment of the Act is clearly supported by the Supreme Court's opinion in the Brooks case<sup>12</sup> where it is stated that "in placing a nonconsenting minority under the bargaining responsibility of an agency selected by a majority of the workers, Congress has discarded the common law doctrine of agency."

With due deference to the Court of Appeals for the Seventh Circuit, we are constrained to disagree with its holding in the *Allis-Chalmers* case<sup>13</sup> that strike ballot clauses of the type here involved are included within the statutory definition of wages, hours, and other terms and conditions of employment. Concededly, an absolute prohibition of strikes is an obligatory subject of collective bargaining; and there is some appeal in the argument that

<sup>11</sup>See *N. L. R. B. v. Corsicana Cotton Mills*, 178 F. 2d 344, 346-347. In that case, the employer sought the inclusion in the collective bargaining agreement of a clause providing that "all employees of the Company whether they belong to the Union or not, shall be given the right to receive notices of union meetings 24 hours in advance and to attend such union meetings and to vote, and no decision of the Union as bargaining agent shall be determined except upon a majority vote of all the employees who attend such a meeting." The Court held it outside the power of the company in that case to insist upon consideration of such a provision, stating "We are not in doubt that Roe (the Company negotiator) was mistaken in his view that he had a right to insert in the recognition paragraph the non-union voting clause."

<sup>12</sup>*Brooks v. N. L. R. B.*, *supra*.

<sup>13</sup>*Allis-Chalmers Manufacturing Company v. N. L. R. B.*, 213 F. 2d 374 (C. A. 7).

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a strike ballot proposal should also be an obligatory subject, as it is less restrictive than a no-strike clause. However, as our dissenting colleague implicitly concedes, there is, in our opinion, a basic difference in the nature of the two types of clauses, which removes the strike ballot clause from the ambit of compulsory bargaining.

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A no-strike clause involves the employees' right to strike. By virtue of the designation of a statutory bargaining representative, the exercise of this right is entrusted to the representative which has the power to waive it in a contract as a quid pro quo and in the interest of industrial harmony. However, the strike ballot clause here, while incidentally limiting the individual's right to strike, is primarily concerned with the mechanics of testing the statutory representative's power to call a strike or to terminate or amend the contract during its term—a purely internal matter unrelated to any condition of employment. Indeed, the strike ballot clause is in essence a procedure designed to force all employees in the unit, as individuals, to pass upon the Respondent's last offer. In our opinion, the requirement that employees be given an opportunity to vote on the Respondent's last offer or to terminate or amend the contract, is simply an attempt to resolve economic differences at the bargaining table between an employer and the statutory agent by dealing with the employees as individuals. In principle, there is little, if any, difference between an employer taking individual proposals directly to the employees and an employer requiring that the bargaining representative obtain approval or disapproval of any economic proposal as a condition precedent to the representative's exercise of statutory powers. Either situation is in derogation of the status of the statutory representative and thus violates the ex-

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clusive representation concept embodied in the Act. Indeed, insistence on a strike ballot clause means only that the union must dilute its authority, diffuse its responsibility, and ultimately dissipate its strength. This clearly is not the purview or purpose of the collective bargaining required by the Act. It is thus apparent that, contrary to our dissenting colleague's statement, we do not predicate our conclusion on the theory that the continued representative status of the Union might be lost by a majority vote on any issue balloted upon, but rather on the fact that the requirement of a poll among the employees constitutes a subversion of the collective bargaining process. It is well established that where, as here, the employees have selected a statutory representative, an employer may not bypass or undercut such representative by attempting to deal directly or indirectly with the employees.<sup>14</sup>

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We accordingly find, as did the Trial Examiner, that the Respondent, by adamantly insisting upon the inclusion of its proposed recognition and employees vote clauses, as a condition to the execution of any contract refused to bargain in violation of Section 8 (a) (5) of the Act.

2. We agree with the Trial Examiner that the Respondent interfered with, restrained and coerced employees in violation of Section 8 (a) (1) of the Act by soliciting employees through newspaper and radio advertising to oppose the Union's "professionals" and to return to work, thereby tending to undermine the Union; by personally soliciting the Local's vice president to return to work and urging him to "forget the International"; and in such pattern of illegal opposition to the Act, by promis-

<sup>14</sup>Medo Photo Corp. v. N. L. R. B., 321 U. S. 678, 683-4; May Dept. Stores Co. v. N. L. R. B., 326 U. S. 376, 383-4



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ing and providing automobile transportation to the plant as a means of inducing the strikers to abandon the Union and return to work. Although the Trial Examiner evaluated the foregoing conduct against a background of an unfair labor practice strike, a finding which the Board does not adopt, we, nevertheless, consider that such conduct is violative of Section 8 (a) (1) because it was reasonably calculated to undermine the Union and to demonstrate to the employees that the Respondent sought to bargain with other than the certified Union.<sup>15</sup>

We also agree with the Trial Examiner that the Respondent violated Section 8 (a) (1) by informing striking employees through the medium of newspaper advertisement and individual letters that it would, and did, regard them as having quit their jobs in the event of their failure to return to work by a specified date, thereby attempting to cause them by unlawful threats of discharge to abandon the strike.<sup>16</sup>

3. The Trial Examiner found that the strike was an unfair labor practice strike based on the Respondent's refusal to bargain. Subsequent findings of 8 (a) (3) violations for failure to reinstate were predicated on this finding of an unfair labor practice strike. We do not adopt either of these findings. In our opinion, the record does not establish by a preponderance of evidence that the strike was caused by the Respondents insistence on contract proposals found violative of Section 8 (a) (5) rather than by the failure of the parties

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to reach agreement on the economic issues in dispute. The record fails to establish that the economic strikers were discriminated against with respect to their reinstatement.

<sup>15</sup>The Texas Company, 93 NLRB 1358

<sup>16</sup>Kerrigan Iron Works, Inc., 108 NLRB 933.

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ment. Indeed, substantially all of the striking employees were eventually reinstated in accordance with a detailed plan worked out between the Respondent and the Local.

*The Remedy*

Having found that the Respondent has engaged in certain unfair labor practices, we shall order that it cease and desist therefrom and take certain affirmative action which we deem necessary to effectuate the policies of the Act.

We have found, in agreement with the Trial Examiner, that the Respondent has refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate bargaining unit by insisting on bargaining with respect to such matters that were not appropriate subjects for bargaining. We deem it necessary, as the only means by which a refusal to bargain can be remedied, that the Respondent be required, upon request, to bargain collectively with the Union.<sup>17</sup>

**ORDER**

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Wooster Division of Borg-Warner Corporation, Wooster, Ohio, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with the International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, as the exclusive representative of all its employees in the appropriate

<sup>17</sup>Frank Bros. Company v. N. L. R. B., 321 U. S. 702.

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unit with respect to rates of pay, wages, hours of employment or other conditions of employment.

(b) Insisting in collective bargaining negotiations with the Union, upon the recognition of a union other than the statutory representative and employee ballot proposals, or any other proposals not involving conditions of employment.

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(c) Soliciting its employees in a manner calculated to undermine the Union as the employees' collective bargaining representative and threatening its employees with loss of employment unless they abandon the strike.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, as the exclusive representative of the employees in the bargaining unit with respect to rates of pay, wages, hours of employment and other conditions of employment, and if an under-

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standing is reached, embody such understanding in a signed agreement.

(b) Post at its plant in Wooster, Ohio, copies of the notice attached hereto and marked Appendix A.<sup>18</sup> Copies of said notice, to be furnished by the Regional Director for the Eighth Region, shall, after being duly signed by a representative of the Respondent, be posted by it immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in

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conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

It Is Further Ordered that the complaint be, and it hereby is, dismissed insofar as it alleges that the Respondent refused to reinstate any employee in violation of Section 8. (a) (3) and (1) of the Act.

Dated, Washington, D. C.

Abe Murdock,	Member
Ivar H. Peterson,	Member
Philip Ray Rodgers,	Member
National Labor Relations Board.	

(Seal)

Guy Farmer, Chairman, dissenting:

The issue in this case is a close and difficult one, and I would be hesitant to disagree with the majority opinion were it not for the importance of the question raised by this case in the administration of the statute. I feel that

<sup>18</sup>In the event that this Order is enforced by a decree of the United States Court of Appeals, there shall be substituted for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

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I would be remiss in my duty if I did not record my contrary view. This case gives me concern as well because I am convinced that it has been presented to the Board on an untenable theory which had already been repudiated by the Supreme Court before the complaint was issued. Since the Board does not frame the issues, we must decide the case on the pleadings and the record coming before us, but I cannot help but say that my appraisal of the case might have been different had the General Counsel followed the pronouncement of the Supreme Court in the American National Insurance<sup>19</sup> case and charged the Respondent with bad faith in the bargaining negotiations. But, the General Counsel has specifically disclaimed any allegation of bad faith, and this precludes me from reviewing the bargaining in this case in terms of this statutory requirement.

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In order to sustain this complaint and find the Respondent guilty of an unlawful refusal to bargain, I would have to find, as the majority appears to do, that it is a per se violation of the Act for one of the parties to collective bargaining negotiations seriously to propose that certain provisions be mutually agreed upon and incorporated in their voluntary agreement, even though it is conceded that the proposals are made in good faith and that the parties could agree to make them a part of their contract without violating this or any other statute. I do not believe that we have the statutory authority to make such a finding with respect to the proposals here in question.

I see no need to review the bargaining negotiations in detail; there is really no dispute about them. I do not,

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<sup>19</sup>N. L. R. B. v. American National Insurance Company, 343 U. S. 395.



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however, agree with the gloss which the Trial Examiner puts on the record. Nor for that matter does the majority, for they have rejected his finding that the strike which occurred during the course of the bargaining negotiations was caused by the Respondent's "insistence to the point of impasse" on the two contract proposals which are now in dispute. I am in complete agreement with my majority colleagues that the strike was called by the Union to enforce its economic demands and to attempt to attain its declared objective, consistently adhered to throughout the negotiations, of securing at the Wooster plant the same contract which it had negotiated at the Pescó plant of the Respondent.

The two proposals which the majority finds the Respondent had no right to inject seriously into the bargaining related to (1) how one of the contracting parties, the Union, should be described in the preamble to the contract, and (2) the conditions under which the Union might strike over disputes arising during the term of the agreement, as well as disputes over contract termination or modification.

On the first, the Union initially proposed that the contracting union be described as "International Union, United Automobile, Aircraft and Agricultural Implement Workers of America and its Local Union No. 1239 UAW-CIO." The Respondent suggested "Local Union No. 1239, affiliated with the International Union, United Automobile, Aircraft and Agricultural Implement

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Workers of America (UAW-CIO)." After considerable bargaining, the point was ultimately reached where the Union proposed "International Union, United Automobile, Aircraft, and Agricultural Implement Workers, Local Union No. 1239" and the Respondent "Local Union No.

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1239, International Union, United Automobile, Aircraft and Agricultural Implement Workers." In other words, the Union wanted the Local's name to follow that of the International and the Respondent desired the Local's name to precede the International's. The record does not disclose, and the parties at the oral argument before the Board could furnish no clear explanation of the legal significance, vis-a-vis, the respective rights and obligations of the parties to the proposed contract, of this disagreement on contract terminology.

The second proposal of the Respondent was that the Union should not engage in a strike over issues which were arbitrable, and that strikes over other issues would be permissible only if the majority of the employees in the bargaining unit authorized strike action in a secret ballot election. This proposal was made by the Respondent in response to a Union proposal of a no-strike clause, which the General Counsel conceded at the oral argument was more restrictive than the company proposal which the General Counsel contends was unlawful.

The General Counsel has presented the case to the Board on the theory that Respondent had the right to make these two proposals but could not insist on them to the point of impasse, although in good faith. The Trial Examiner accepted this theory, and found that there was in fact insistence to the point of impasse. The majority of the Board does not, as I understand their position, agree with the General Counsel and the Trial Examiner either on the theory or the facts. Rather, the majority finds, contrary to the Trial Examiner, that the Respondent's "insistence" on the two proposals did not bring about an impasse in the bargaining and did not cause the strike. The majority, nevertheless, finds that the Respondent breached its obligation to bargain by injecting and

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keeping these two issues in the bargaining negotiations after the Union had voiced its opposition to them.

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This, I think, is tantamount to holding that the Respondent had no right to put these proposals on the bargaining table, a position not espoused by the General Counsel or adopted by the Trial Examiner. I say this because it seems obvious to me that it is a meaningless play on words to say that some proposals are "bargainable" but must be withdrawn the moment the other party indicates opposition to them. For, if there are certain proposals which the opposite party can brush off the bargaining table at will, it would be an idle gesture to bring them up at all. To say that a party has no right to "bargain" about a bargainable issue is a contradiction in terms which adds confusion rather than clarity to the ground rules of collective bargaining. It would be better to rule that neither party has the right to inject any issue in bargaining negotiations except those issues which the majority of the Board judges to be appropriate for proposing and pursuing to the point of "insistence," whatever may be the meaning of that rather imprecise term. There would still be continuing uncertainty as to what issues it was safe to propose, but at least such a standard would make it unnecessary for the Board to attempt to determine the precise point at which adherence to a second-class bargaining issue becomes unlawful "insistence." But the majority has not taken this logical step, and, indeed, it would be difficult to rationalize a proscription against a good faith proposal of a lawful contract clause. Still, I think it is fair to observe that the practical effect of the majority decision is to establish two types of "bargainable" issues and to remove one of them from the area of give-and-take bargaining.

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The vice which the majority appears to see in the Respondent's two proposals is that they derogate from the status of the Union as the certified exclusive representative of the employees. The proposal relating to the description of the Union, the majority views as a refusal to recognize and bargain with the International Union as opposed to its local organization. But the most that I can make out of Respondent's proposal on this point is that Respondent wished to have the Local as the primary party to the agreement but was willing to recognize in the agreement the identification of the Local with the International. I cannot regard the disagreement of the parties on this

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point as fundamental. We can take notice of the fact that unions, including certified unions, are described in various ways in collective bargaining agreements, some by the name of the Local, some by the name of the International, and others by both. Frequently, the International Union itself pursues a policy of having its subordinate locals as parties signatory to labor agreements. It would never have occurred to me before this case arose that this Board would consider this question a matter of concern in administration of the Statute.

Moreover, the Union never requested a recognition clause which followed the wording of the certificate, and the Respondent never refused to agree to such a clause.<sup>20</sup> At the very beginning of negotiations, the Union proposed a recognition clause which was a material departure from the form of the certificate. It never thereafter suggested that the certificate be followed in describing the bargaining representative. It can hardly be contended that Re-

<sup>20</sup>Cf. Times Publishing Company, 72 NLRB 575.

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spondent was required to accept the Union's proposed modification of the certificate. On the contrary; I think it had the right to assume, as it apparently did, that the Union was opening up for negotiation the subject of a recognition clause and that it could, following the lead of the Union, propose its own version of such a clause.

It would be quite a different issue if Respondent had refused to recognize and deal with the designated representatives of the certified union. This I would regard as a clear violation of Respondent's obligation to treat with the representative designated and selected by the employees as their bargaining agent. But that was not the case. The record shows that Respondent at no time questioned the authority of the Union negotiators, who included among their number several officers and agents of the International. Respondent did not at any time refuse to deal with the International, or insist on dealing only with officers of the Local. Thus, it is inaccurate as a matter of fact to say that Respondent sought to dictate who should represent the employees in the bargaining sessions. All the Respondent sought to do was to elicit the

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agreement of the Union negotiators to the Company's proposal as to how the contract should describe the Union party. The Union negotiators were free to reject the proposal, and there was no way in which the Respondent could have imposed this condition without the voluntary consent of the Union. The distinction between unilateral determination of an issue and a good faith proposal for a mutual agreement is a basic one which I do not think is recognized by the majority.

The majority also appear to hold that the strike-vote proposal was a unilateral denial of the Representative status of the Union. This is apparently on the theory that



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exclusive bargaining rights of the certified Union could be placed in jeopardy by a shift in majority during the certification year. But I am unable to find this import in Respondent's proposal. What Respondent proposed was not to submit to the employees the question of whether or not the Union should continue to be their exclusive representative under the contract and during the certification year. In essence, the proposal was simply that the majority sentiment of the employees be sounded out in a secret ballot poll before being called upon to go out on strike over certain disputes arising under the contract. I am unable to draw so sharp a dichotomy between the employees and the union which represents them as to conclude that a voluntary agreement made with the designated representative of the employees to submit the issue of a strike to a majority vote would be inimical to the collective bargaining obligation or to the basic purposes of the National Labor Relations Act. Again, it should be emphasized that the question here is not whether the Respondent could unilaterally impose a strike-vote requirement, nor is it a question of the Respondent's right to conduct strike votes. The Board has held that it is unlawful for an employer to deal directly with the employees in this manner in disregard of the collective bargaining representative.<sup>21</sup> The issue presented here is whether it is a per se violation of the collective bargaining obligation for the Respondent to seek to secure Union agreement to such a proposal in the course of contract negotiations. I find no persuasive authority in the Statute

on in Court precedent for finding that good faith advancement of such a contract provision is unlawful.

<sup>21</sup>The Stanley Works, 108 NLRB 734.

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The majority's position with respect to the strike-vote clause seems to me to be based on a fundamental misunderstanding of the nature of the obligation to bargain created by the Act.

Section 8 (a) (5) states simply that it is an unfair labor practice for an employer "to refuse to bargain collectively with the representative of his employees, subject to the provisions of Section 9 (a)." "To bargain collectively," means, according to Section 8 (d), the "mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment . . . but such obligation does not compel either party to agree to a proposal or require the making of a concession." According to the Supreme Court, "the term 'bargain collectively' as used in the Act 'has been considered to absorb and give statutory approval to the philosophy of bargaining as worked out in the labor movement of the United States.'"<sup>22</sup>

As interpreted by the Board and the Courts, an employer must bargain collectively with the representative of his employees concerning "wages, hours and other terms and conditions of employment." This is an absolute requirement of the Statute.<sup>23</sup> An employer cannot refuse to bargain concerning such matters, and good faith is no defense to such refusal. But so long as the employer meets and confers with the representative of his employees concerning the compulsory subjects of collective bargain-

<sup>22</sup>N. L. R. B. v. American National Insurance Company, 343 U. S. 395, 408, quoting with approval from *Telegraphers v. Railway Express Agency*, 321 U. S. 343, 346.

<sup>23</sup>*Richfield Oil Corporation*, 110 NLRB No. 54; *Inland Steel Company v. N. L. R. B.*, 170 F. 2d 347 (C. A. 7); *N. L. R. B. v. J. H. Allison & Co.*, 165 F. 2d 766 (C. A. 6).

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ing, he cannot be held to have violated Section 8 (a) (5), unless in making proposals and carrying on negotiations he fails to meet the good faith test prescribed in Section 8 (d). This seems to be the plain meaning of Section 8 (d) and of the pronouncement of the Supreme Court in the American National Insurance case, *supra*. As I read that case, the

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Supreme Court expressly repudiated the *per se* theory of liability relied on by the majority.

In American National Insurance, the respondent employer insisted on the incorporation in the agreement of a so-called management functions clause which reserved to the employer the exclusive right to determine unilaterally a number of conditions of employment, including promotions, discipline and work scheduling. The Board held that the employer's insistence on the prerogative clause was in derogation of the bargaining representative's rights and therefore constituted *per se* a violation of Section 8 (a) (5). The Supreme Court rejected this argument of the Board. It said that the Board cannot sit in judgment upon the substantive terms of collective bargaining agreements, and that whether a contract should contain fixed standards for such matters as work scheduling or should provide more flexible treatment is an issue for determination across the bargaining table and not by the Board. It further said (at p. 409):

The duty to bargain collectively is to be enforced by application of the good faith bargaining standards of Section 8 (d) to the facts of each case rather than by prohibiting all employers in every industry from bargaining for management functions clauses altogether.

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The Court's holding, therefore, is that an employer may lawfully effectively bargain for a clause which grants to the employer the right unilaterally to determine certain conditions of employment, provided only that its overall conduct meets the good faith test of Section 8 (d). In the present case, Respondent sought less than did the employer in *American National Insurance*. It sought more power, not for itself, but for the employees, the representative's principal.

Relying upon the *American National Insurance* decision, the Court of Appeals for the Seventh Circuit in the *Allis-Chalmers*<sup>24</sup> case refused to enforce a Board Order,<sup>25</sup> finding an employer guilty of a refusal to bargain for insisting to the point of impasse that any contract reached between the employer and the bargaining representative contain provisions for ratification by the employees before the contract became effective, and for a strike vote by employees before

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a strike was called if the employer and the union were unable to reach agreement. The Board had held that insistence to the point of impasse on both these provisions was per se unlawful because they involved depreciation of the status of the bargaining representative and interference with the internal affairs of the union. The Board also had argued that the strike vote clause was tantamount to an attempt to by-pass the union and to deal directly with the employees. The Court of Appeals rejected all these arguments.

The strike-vote clause which was the subject of consideration in the *Allis-Chalmers* case and the strike-vote clause in the present case are very much alike. The argu-

<sup>24</sup>*Allis-Chalmers Manufacturing Company v. N. L. R. B.*, 213 F. 2d 347 (C. A. 7).

<sup>25</sup>*Allis-Chalmers Manufacturing Company*, 100 NLRB 939.

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ments used by the majority in this case are substantially the arguments advanced by the Board in the Allis-Chalmers case. At the present time, therefore, the only Court that has squarely passed on the issue raised in this case has held that insistence to the point of impasse on an employee strike-vote clause is not per se unlawful.

Further, I cannot understand the legal reasoning by which the majority reach the conclusion that the Respondent's "insistence" on a strike-vote clause violated Section 8 (a) (5). The Union first proposed a no-strike clause. The Respondent countered with its strike-vote proposal. Clauses similar to that offered by the Respondent have been incorporated in bargaining contracts between other companies and labor organizations, including the Union. The General Counsel concedes that neither the proposal for such a clause, nor the incorporation of it in an agreement is unlawful. Presumably, the majority would give effect to such a clause if it was so incorporated.<sup>26</sup> There is also no contention that the Respondent used coercion or any other unlawful method to secure a lawful result. Finally, the General Counsel concedes that the Respondent acted in good faith throughout. How then can the use of persuasion and firm, but good faith bargaining, to bring lawful proposal to lawful fruition be denominated per se illegal?

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The majority also considers that the Respondent's conduct was tantamount to an attempt to by-pass the Union and to deal instead with the employees directly. It then draws upon such cases as Medo Photo Supply Corp.<sup>27</sup> to

<sup>26</sup>In Briggs-Indiana Corporation, 63 NLRB 1270, the union agreed that it would not accept certain employees into membership. Subsequently, in violation of its agreement, the union filed a representation petition seeking to represent these employees. A majority of the Board dismissed the petition in view of the still-extant, valid agreement.

<sup>27</sup>Medo Photo Supply Corporation v. N. L. R. B., 321 U. S. 678. Cf. The Fort Industry Company, 77 NLRB 1287, 1300.



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establish the illegality of such conduct. In Medo, as in similar cases, the employer ignored the statutory representative and bargained directly with the employees. The vice in such action was that the employer went behind the representative's back to deal directly with the employees, thus undermining the authority of the representative. But if an employer, with the consent of the representative, negotiates directly with the employees, he violates no law. To put the worse possible construction on Respondent's conduct, that is all that it was trying to do in this case—secure the approval of the representative for dealing directly with the employees. Respondent never dealt with employees; it did not go behind the Union's back. It negotiated only with employee representatives, and it sought to persuade the latter to agree to the strike vote proposal, a concededly lawful objective. This is emphatically therefore not a Medo type situation.

This Board has held that it is unlawful to attempt to bargain for a closed shop or for some other objective which is proscribed by the provisions of the Statute.<sup>28</sup> But, in the main, the disposition of the Board has been to enlarge, rather than restrict, the area of bargaining. Thus, the Board held several years ago, over strong opposition, that pension plans are bargainable,<sup>29</sup> and this decision was approved by the Court. Since that decision, bargaining for pension plans has been accepted as a routine subject for collective bargaining, although at the time the attempt by unions to negotiate on this issue was considered by employers as an unwarranted infringement of their institutional rights. More recently, the Board held in the Richfield Oil<sup>30</sup>

<sup>28</sup>E. g., *National Maritime Union of America*, 78 NLRB 971, 978, enf'd 175 F. 2d 686 (C. A. 2), cert. den. 338 U. S. 954.

<sup>29</sup>*Inland Steel Company*, 77 NLRB 1, enf'd 170 F. 2d 247 (C. A. 7).

<sup>30</sup>*Richfield Oil Corporation*, 110 NLRB 356.

*Decision and Order.*

case that an employer who wished to institute a stock purchase plan for his employees was under an obligation to bargain about it with the union. Here again, employers maintained that this was a subject which fell outside the area of collective

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bargaining and that the union was attempting to invade an area traditionally reserved to management.

These decisions, in my opinion, have done no more than keep in step with the growth and development of the institution of collective bargaining. We have only within the past few weeks witnessed the negotiation in the automobile industry of a new and different type of employee benefit which I doubt was within the contemplation of anyone when the Statute was first enacted. In this instance, no question was raised as to the bargainability of these benefits, but I dare say a serious dispute might well have developed, leading to a possible strike or other labor disturbance, if the decisions of the Board and the Courts had not recognized the general trend towards expansion rather than restriction of the bargaining area.

In perspective then, I fear that it is a retrogressive step to embark, as the majority is doing, on the hazardous task of sifting out contract proposals made at the bargaining table, and designating some as proper and others improper, despite the fact that all are subjects for lawful agreement. The majority is concerned, I am sure, with the possibility that one party or the other may take unfair advantage, but in the present stage of labor relations, I am confident that we can rely upon the parties to protect their own interests and exercise their undoubted right to reject proposals which impinge too deeply upon their status. I think that the Board will make a greater contribution to successful collec-

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tive bargaining by allowing the parties more freedom to make their own bargains and by permitting the institution of collective bargaining to develop through natural and normal growth. Any attempt to codify the issues which are bargainable and those which are not would bring about a premature and artificial crystallization of labor-management relations, and, moreover, would inject the Government into the collective bargaining process to a degree which would be disruptive of labor-management relationships. In the long run, it would destroy the freedom which has heretofore been characteristic of the collective bargaining process.

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The adoption of this view does not mean that either party to contract negotiations could disrupt bargaining and forestall agreement by making and adamantly pressing outrageous demands. Any party who makes and pursues contract proposals is subject to the overall requirement that he conduct the negotiations in good faith. The good faith test of the Statute may not be a perfect one, but it is the test which Congress devised, and which the Supreme Court has said we must follow. I regard it as preferable by far to a piecemeal, proposal-by-proposal policing of an unlimited variety of contract demands for the purpose of sorting out the good from the bad. I would leave that business to the parties themselves, and, so long as the proposals are appropriate for lawful agreement, I would judge their conduct by the test of good faith. I do not intend even to imply that I regard the two employer proposals involved here as reasonable or salutary. It is not my province to make judgments of this kind; that is a decision which, in my view, Congress has reserved to the contracting parties. Since I

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cannot consider the good faith of the parties in this case, I would dismiss the complaint.

Dated, August 26, 1955, Washington, D. C.

Guy Farmer, Chairman,  
National Labor Relations Board.

Boyd Leedom, Member, concurring in dissent:

I dissent from the majority and hold with Chairman Farmer substantially on the grounds expressed in his dissenting opinion.

Dated, August 26, 1955, Washington, D. C.

Boyd Leedom, Member,  
National Labor Relations Board.

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APPENDIX A  
NOTICE TO ALL EMPLOYEES  
PURSUANT TO  
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will bargain, upon request, with International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, wages, hours of employment, or other conditions of employment, and embody in a signed agreement any understanding reached. The bargaining unit is:

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All production and maintenance employees including plant clerical employees, stock and tool handlers, excluding all production control department employees, industrial and product engineering department employees, statistical quality control department employees, time-keepers, checkers, laboratory employees, all office employees and office clerical employees, nurses, professional employees, guards, watchmen and supervisors as defined in the Act.

We Will Not insist, on collective bargaining negotiations with the Union, upon the recognition of a union other than the statutory representative and employee ballot proposals, or any other proposal not involving conditions of employment.

We Will Not solicit our employees in a manner calculated to undermine the Union as the employees collective bargaining representative, or threaten our employees with loss of employment unless they abandon the strike.

We Will Not in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.



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All of our employees are free to become, remain, or to refrain from becoming or remaining members in good standing in International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, or any other labor organization except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act.

Wooster Division of Borg-Warner  
Corporation  
(Employer)

Dated..... By.....  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof and must not be altered, defaced, or covered by any other material.

## **PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD**

To the Honorable, the Judges of the United States  
Court of Appeals for the Sixth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, Wooster Division of Borg-Warner Corporation, Wooster, Ohio, its officers, agents, successors and assigns. The proceedings resulting in said order are known upon the records of the Board as "In the Matter of Wooster Division of Borg-Warner Corporation, Employer and International Union, United Automobile Workers of America, AFL, Petitioner and International Union, United Automobile, Aircraft & Agricultural Implement workers of America, CIO, Intervenor, Case No. 8-RC-1842," and "Wooster Division of Borg-Warner Corporation and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO, Case No. 8-CA-830."

In support of this petition the Board respectfully shows:

(1) Respondent, Wooster Division, is an unincorporated division of Borg-Warner Corporation, an Illinois corporation, engaged in business in the State of Ohio, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on August 26, 1955, duly stated its findings of fact and conclusions of law, and issued an order directed to the Respondent, its officers, agents,

*Petition for Enforcement, Etc.*

successors and assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing those sections of the Board's said Order which relate specifically to the Respondent herein, and requiring Respondent, its officers, agents, successors and assigns, to comply therewith.

(s) Marcel Mallet-Prevost,  
Assistant general Counsel,  
National Labor Relations Board.

Dated at Washington, D. C.,  
this 22nd day of September, 1955.

**RESPONDENT'S ANSWER TO THE PETITION  
FOR ENFORCEMENT.**

Case No. 8-CA-830

Now comes the Respondent, Wooster Division, Borg-Warner Corporation, and for its Answer to the Petition for Enforcement of an Order of the National Labor Relations Board (herein called the Board) respectfully states:

1. Respondent admits the allegations of Paragraphs 1, 2 and 3 in said Petition for Enforcement, except as hereinafter stated.

2. For its further Answer, the Respondent denies that the Board's order is entitled to enforcement and states that the Board erred in its findings of fact, in its conclusions of law that the Respondent violated Sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act, as amended, and in issuing said Order, in that:

(a) The record, when considered as a whole, contains no substantial evidence to support the findings of fact upon which the Board based its conclusions that the Respondent violated Section 8(a)(5) of the Act.

(b) The record, when considered as a whole, contains no substantial evidence to support the findings of fact upon which the Board based its conclusions that the Respondent violated Section 8(a)(1) of the Act.

(c) The Board's findings of fact do not support its conclusions that the Respondent violated Section 8(a)(5) of the Act, and do not support its order.

(d) The Board's findings of fact do not support its conclusions that the Respondent violated Section 8(a)(1) of the Act, and do not support its order.

(e) There is no substantial evidence in the record considered as a whole to support the Board's order.

*Respondent's Answer to Petition, Etc.*

(f) The Board's findings of fact do not support its order.

(g) The Board's order is contrary to law.

Wherefore, the Respondent respectfully prays that this Court vacate and set aside the Board's order and dismiss this proceeding.

James C. Davis,  
Squire, Sanders & Dempsey,  
Attorneys for the Respondent.

## Certificate of Service

I hereby certify that on the 11th day of November, 1955, I served a copy of the foregoing Answer upon Marcel Mallet-Prevost, Assistant General Counsel, National Labor Relations Board, by mailing a copy to him by prepaid United States mail at the office of the National Labor Relations Board, Washington 25, D. C.

James C. Davis

A True Copy  
Attest:

Carl W. Reuss, Clerk,

By (s) Grace Keller,

Deputy Clerk.

(Seal)



512 Minute entry of argument and submission—April  
18, 1956 [omitted in printing].

In United States Court of Appeals for the Sixth Circuit  
(Case No. 12,687)

*Judgment*

September 12, 1956

On Petition to enforce an order of the National Labor Relations Board,

This cause came on to be heard on the transcript of the record from the National Labor Relations Board, and was argued by counsel.

On consideration whereof, it is now ordered, adjudged and decreed by this Court that the order of the National Labor

Relations Board be and it is modified by striking there-

513 from the words "and employee ballot proposals or any other proposals not involving conditions of employ-

ment" in paragraph 1 (b), the words "and threatening its employees with loss of employment unless they abandon the

strike" in paragraph 1 (c), and the final paragraph dismissing so much of the complaint dealing with the alleged refusal of

the Company to reinstate certain employees, with like modifications of the posted notice, and as so modified enforcement of the order is decreed. The case is remanded to the Board for

further findings and ruling in accordance with the Court's opinion herein.

In United States Court of Appeals for the Sixth Circuit

(Case No. 12,730)

*Judgment*

September 12, 1956

On Petition to enforce an order of the National Labor Relations Board,

This cause came on to be heard on the transcript of the record from the National Labor Relations Board, and was argued by counsel.

On consideration whereof, it is now ordered, adjudged and decreed by this Court that the order of the National Labor Relations Board be and it is modified by striking therefrom the words "and employee ballot proposals or any other proposals not involving conditions of employment" in paragraph 1 (b), the words "and threatening its employees with loss of employment unless they abandon the strike" in paragraph 1 (c), and the final paragraph dismissing so much of the complaint dealing with the alleged refusal of the Company to reinstate certain employees, with like modifications of the posted notice, and as so modified enforcement of the order is decreed. The case is remanded to the Board for further findings and ruling in accordance with the Court's opinion herein.

516 In United States Court of Appeals for the Sixth Circuit

Nos. 12687, 12730

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

WOOSTER DIVISION OF BORG-WARNER CORPORATION,  
RESPONDENT

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND  
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-  
CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT, AND WOOSTER  
DIVISION OF BORG-WARNER CORPORATION, RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL  
LABOR RELATIONS BOARD

*Opinion*

Decided September 12, 1956

Before MARTIN, MILLER and STEWART, Circuit Judges

[File endorsement omitted.]

MILLER, Circuit Judge. These cases are before the Court upon a petition by the National Labor Relations Board for enforcement of its order against the respondent Wooster Division

of Borg-Warner Corporation, hereinafter called the Company, and upon a petition by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, (UAW-CIO), hereinafter called the International or the

Union, to review and set aside so much of the order as  
517 dismissed the complaint against the Company. The

Company, which is an unincorporated division of Borg-Warner Corporation is engaged at Wooster, Ohio, in the manufacture and sale of fuel and hydraulic pumps. Jurisdiction of the proceedings under Section 10 (e) and (f) of the National Labor Relations Act is conceded.

Following an intensive election campaign, the Board on December 18, 1952, certified the Union as the exclusive representative of the Company's Wooster employees. On January 23, 1953, the Union presented a proposed agreement to the Company which referred to the Union as "International Union, United Automobile, Aircraft and Agricultural Implement Workers of America and its Local Union No. 1239, UAW-CIO." The Company submitted counter proposals on so-called noneconomic issues to the Union on February 9th in which it designated the employees' representative as "Local Union 1239, affiliated with the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO)." The Union's representative told the Company representatives that this provision violated the certification of the Board.

This counter proposal of the Company also provided that on issues not subject to arbitration no strike could be called unless a majority of the employees in the bargaining unit, both union and non-union, voted by secret ballot on whether to accept or reject the Company's last offer or any subsequent offer. The Union's representative stated that he would not discuss this ballot proposal because the Union would not accept it under any circumstances.

Bargaining conferences were held during February and March. The Union's proposals were substantially the same as were contained in an agreement which it had secured for employees at the Cleveland Pesco Division of Borg-Warner Corporation. The Company submitted its economic proposals on March 11th. They were not satisfactory to the Union. On March 14, the Union distributed among the employees a document showing under 21 separate headings the difference be-

tween the Company's offer and the provisions of the Pesco agreement. A strike at the plant was called if no solution of the overall issue was reached by March 20th. There were bargaining conferences on March 17, 18 and 19 without reaching an agreement. At the meeting on March 19, the Union submitted a counter proposal covering thirty issues still in dispute. The Company took the position that its last proposal should be accepted and no agreement was reached. The strike commenced on March 20.

518 Bargaining continued during April. The Company made a final proposal to change the name of the representative to "Local Union 1239 of United Automobile, Aircraft and Agricultural Implement Workers of America." The Union countered with an offer to make its name read "The International, Local 1239." No agreement was reached, the Union insisting that the International be the primary party and the Company insisting that the primary party be the Local. The Company also refused to recede from its insistence upon the employee ballot proposal. On April 21, the Union asked the Company if it would withdraw its demands concerning the recognition and employee ballot provisions if the Union acceded to all the other proposals of the Company. The Company representative stated that the Company thought its proposal was fair and that it should be taken "as it is."

On April 25th, the International recommended that the employees accept the best offer they could get from the Company and return to work. On May 5th, a collective bargaining agreement retroactive to March 20th was entered into between the Local and the Company, which recognized the Local as the exclusive bargaining agent and contained the disputed employee ballot proposal.

The Union filed its initial charge on April 7, 1953. Following hearings and the Intermediate Report of the Trial Examiner, the Board, with two of its members dissenting, held that the Company did not propose its recognition and employee ballot clauses as matters which the Union could voluntarily accept or reject, but adamantly insisted upon the inclusion of these two clauses as a condition precedent to the execution of any agreement; that its liability under Section 8 (a) (5) turned not upon its good faith, but rather upon the legal question of whether the proposals were obligatory subjects to collective bargaining; that the Company was obligated to accord exclusive and un-



equivocal recognition to the statutory representative and that its insistence upon making the Local not only a party to the agreement but the only party empowered to represent the employees was in complete derogation of the certificate; that the employee ballot proposal was simply an attempt to resolve economic differences at the bargaining table between an employer and the statutory agent by dealing with the employees as individuals, which was in derogation of the status of the statutory representative and violated the representation concept embodied in the Act. It held that the Company by  
 519 adamantly insisting upon the inclusion of its proposed recognition and employee vote clauses as a condition to the execution of any contract refused to bargain in violation of Section 8 (a) (5) of the Act.

The Board also held that the Company had interfered with its employees in violation of Section 8 (a) (1) of the Act by soliciting them to abandon the Union and return to work, and by having advised the strikers that they would be, and were, deemed to have quit their jobs by failing to return to work by April 20th.

The Board held, however, contrary to the Trial Examiner, that the strike resulted from the parties' failure to reach agreement on the economic issues in dispute, and was not attributable to the Company's insistence on its recognition and employee ballot proposals. It was accordingly not an unfair labor practice strike entitling the strikers to reinstatement as a matter of right. It dismissed so much of the complaint as charged the Company with refusing to reinstate any employee in violation of Section 8 (a) (3) and (1) of the Act. The Union seeks a review of this ruling.

The Order, enforcement of which is now sought by the Board, directed the Company to cease and desist from (1) refusing to bargain collectively with the Union; (2) insisting upon the recognition of a union other than the statutory representative and insisting upon employee ballot proposals, or any other proposals not involving conditions of employment; (3) soliciting or threatening with loss of employment the striking employees; and (4) in any other manner interfering with its employees in the exercise of their rights under the Act. It affirmatively directed the Company to bargain collectively with the Union with respect to rates of pay, hours, and other conditions



of employment, and if an understanding was reached, embody such understanding in a signed agreement.

The Board in its ruling takes the position that the Company's liability to bargain collectively under Section 8 (a) (5) of the Act turns not upon its good faith, but rather upon the legal question of whether the proposals are obligatory subjects of collective bargaining under the statute. It recognizes that if the proposals are permissible statutory demands, the Company was privileged to adamantly insist upon bargaining as to them, provided the bargaining was conducted in good faith. *N. L. R. B. v. American National Ins. Co.*, 343 U. S. 395, 404; *N. L. R. B. v. United Clay Mines Corp.*, 219 F. (2d) 120, C. A. 6th. On the other hand, it contends that the proposals are not within the statutory subjects of bargaining, namely, "wages, hours, and other terms and conditions of employment" (Sec. 8 [d] of the Act), and that the Company's insistence upon them to the point of impasse, even though in good faith, made the action illegal per se. *N. L. R. B. v. P. Lorillard Co.*, 117 F. (2d) 921, C. A. 6th; *N. L. R. B. v. Taormina*, 207 F. (2d) 251, C. A. 5th; *N. L. R. B. v. Dalton Telephone Co.*, 187 F. (2d) 811, C. A. 5th, cert. denied, 342 U. S. 824; *N. L. R. B. v. Corsicana Cotton Mills*, 178 F. (2d) 344, C. A. 5th.

In *Allis-Chalmers Mfg. Co. v. N. L. R. B.*, 213 F. (2d) 374, 376, C. A. 7th the Court held that if the strike vote clause in that case was included within the statutory subjects of bargaining the employer was permitted to insist upon its position with respect thereto, provided the bargaining was conducted in good faith, but if it was not included within the statutory subjects of bargaining it could not be insisted upon by the employer to the point of creating an impasse in the negotiations. The Court, however ruled, contrary to the ruling of the Board in this case, that the strike vote proposal fell within the statutory subjects of bargaining about which the employer had the right to bargain in good faith. We are in accord with that ruling, without attempting to pass upon the correctness of the Court's statement with respect to a situation where a proposed clause is not within the statutory subjects of bargaining. The bargaining area of the Act has no well defined boundaries; the phrase "conditions of employment" has not acquired a hardened and precise meaning. Management and labor are now being required to bargain collectively.

about issues which formerly were not considered as proper issues for inclusion in the usual collective bargaining agreement. *Inland Steel Co. v. N. L. R. B.*, 170 F. (2d) 247, 251, C. A. 7th (retirement and pension plans), *W. W. Cross & Co. v. N. L. R. B.*, 174 F. (2d) 875, C. A. 1st (group insurance program), *Richfield Oil Corp. v. N. L. R. B.*, 231 F. (2d) 717, C. A. D. C. (stock purchase plan), *N. L. R. B. v. Niles-Bement-Pond Co.*, 199 F. (2d) 713; C. A. 2nd (Christmas bonus), *N. L. R. B. v. Reed & Prince Mfg. Co.*, 205 F. (2d) 131, 136, C. A. 1st, (Check-off proposal). The area of compulsory collective bargaining is obviously an expanding one. The Board concedes that a no-strike clause is within the area. *N. L. R. B. v. American National Insurance Co.*, supra, 343 U. S. p. 408, note 22. The qualified no-strike proposal of the Company should not be classified differently. *Allis-Chalmers Mfg. Co. v. N. L. R. B.*, supra. In our opinion, the strike ballot proposal was within the area.

The Board contends that to permit an employer "to go behind the designated representatives in order to bargain with the employees themselves" would undermine  
521 the representative status of the Union contrary to the provisions of Section 9 (a) of the Act which provides that the representatives selected by the majority of the employees "shall be the exclusive representatives of all the employees" in the bargaining unit. *Medo Photo Supply Corp. v. N. L. R. B.*, 321 U. S. 678, 684, 685, 687; *May Department Stores Co. v. N. L. R. B.*, 326 U. S. 376, 383-384. In *Medo Photo Supply Corp. v. N. L. R. B.*, the Court held that orderly collective bargaining requires that the employer be not permitted to go behind the designated representatives, in order to bargain with the employees themselves, even though the employees asked that the designated representatives be disregarded; that the duty of the employer to bargain collectively with the chosen representatives of his employees also involves "the negative duty to treat with no other." In that case, however, the attempt to go behind the designated representatives was without the consent of the representatives. In the present case, there was no attempt to bargain with the employees instead of the designated representatives. The Union was at all times recognized as the exclusive representative of the employees; the bargaining was done with it, not with the employees. Any requirement that the employees approve the

action of the Union would be the result of an agreement with the Union to that effect. We do not believe that the ballot proposal denied in any way the unqualified recognition of the certified bargaining agent within the meaning of the Act.

The Board urges upon us the ruling in *N. L. R. B. v. Corsicana Cotton Mills*, 178 F. (2d) 344, C. A. 5th. In that case the employer insisted that the contract contain a provision to the effect that nonunion employees should have a right to attend union meetings and to vote upon the provisions of the contract negotiated by the union as bargaining agent. The Court held that such insistence withheld recognition from the Union as bargaining agent. The facts in that case go far beyond the present case. In that case the certified representative would have been unable to make any binding agreement with the employer, who as a practical matter would be dealing with all of the employees in agreeing upon the terms of the contract. In the present case, the non-union employees are permitted to express their views on only one phase of the contract, which was a matter of such vital importance as to justify an expression of their views.

The Company contends that the recognition proposal is also within the bargaining area, pointing out that Section 8 (d) of the Act defining the obligation to bargain collectively  
522 does not restrict it to conferring in good faith with respect to wages, hours and other terms and conditions of employment but includes "the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached \* \* \*". We do not think the Section is to be so broadly construed. Section 8 (a) (5), which imposes the duty of collective bargaining, is by its express terms tied in with Section 9 (a) which makes the designated representative the exclusive representative of the employees for the purpose of collective bargaining. This status is acquired by statute and is not within the area of collective bargaining. *N. L. R. B. v. Louisville Refining Co.*, 102 F. (2d) 678, 680-681, C. A. 6th, cert. denied, 308 U. S. 568; *N. L. R. B. v. Deena Artware*, 198 F. (2d) 645, 651, C. A. 6th, cert. denied, 345 U. S. 906. Section 8 (d) must be construed in connection with Sections 8 (a) (5) and 9 (a). When so considered, the phrase "negotiation of an agreement, or any question arising thereunder" means the terms of the

agreement rather than the party with whom the agreement is being negotiated.

The Company attempts to justify its position by pointing out that it at all times recognized the Union as the exclusive bargaining agent and did all of its bargaining with it as such agent. It contends that there is nothing in the Act which requires that after all issues have been agreed upon the written contract embodying the agreement must be made with the agent who negotiated the agreement. Although there is no specific provision to that effect, we believe it is clearly implied that the designated bargaining agent is the party with whom the contract is to be made unless it voluntarily relinquishes such right in favor of another. The collective bargaining contract is not the contract of employment. It is rather the trade agreement which controls the individual contracts of employment. *J. I. Case Co. v. N. L. R. B.*, 321 U. S. 332. It is a strained construction of the Act to say that the party representing the employees and negotiating such a trade agreement for their benefit is not entitled to complete the job by having the contract which it has negotiated executed with it as the representative of the individual employees for whom it is acting. Such a contract is necessarily executed with a representative of the individual employees. We fail to see the reasoning which would authorize the substitution of the Local, not the official representative of the employees, for the Union which is the official representative of the employees, over the objections of the Union. The fact that the Union offered to share this right with its Local did not give the Company the

523 right to insist that it relinquish the right completely.

The Company was not within its rights in insisting upon its proposal pertaining to this phase of the case.

While the strike was in progress the Company solicited its employees through newspaper and radio advertising to return to work. It stressed the advantages to be derived by returning to work and the unreasonableness of the Union's demands. It offered free bus transportation for this purpose. Two Company foremen visited the Local's vice-president at his home for that purpose and suggested that an agreement might be arrived at "if the Local would forget the International." The Board ruled that such conduct violated Section 8 (a) (1) of the Act because it was an attempt to deal individually with the employees rather than with the Union and was reasonably calcu-



lated to undermine the Union. We recognize the rule urged upon us by the Company that communications with employees by an employer are protected under the First Amendment of the Constitution so long as such communications contain no threat of reprisal or promise of benefit. *N. L. R. B. v. Ford Motor Co.*, 114 F. (2d) 905, 913-915, C. A. 6th, cert. denied 312 U. S. 689; *N. L. R. B. v. Cleveland Trust Co.*, 214 F. (2d) 95, 99, C. A. 6th. Under the rule the employer is free to say to his employees that he wishes to carry on production and, if the employees desire so to do, they may return to work. *N. L. R. B. v. Bradley Washfountain Co.*, 192 F. (2d) 144, 153, C. A. 7th. For the purposes of this opinion, it is sufficient to say that in our opinion the communications complained of went beyond permissible limits. *N. L. R. B. v. Montgomery Ward & Co.*, 133 F. (2d) 676, 681, C. A. 9th; *N. L. R. B. v. Clearfield Cheese Co.*, 213 F. (2d) 70, 72-73, C. A. 3rd; *N. L. R. B. v. James Thompson & Co.*, 208 F. (2d) 743, 748, C. A. 2nd; *May Department Stores Co. v. N. L. R. B.*, 326 U. S. 376, 385.

The Company also advised its striking employees by newspaper advertisement and individual letters that their jobs were still open if they returned to work, that the Company was hiring new people every day but would hold the jobs open until Monday, April 20, 1953, at which time it would start hiring replacements, and that setting a deadline for return was a necessary move in order to know who was returning and who was not. In a letter of April 15, 1953 it was said: "If you do not return, I wish you the best of success in your new job whatever and wherever it may be." In a letter of April 22, 1953, addressed to "Those Who Chose to Give Up Their Jobs at Wooster

Division" the Company's President stated: "When you 524 did not report for work on April 20, it became apparent that you had decided to give up your job here." The Board found this to be a violation of Section 8 (a) (1) of the Act in that it was an attempt to cause the employees to abandon the strike by unlawful threats of discharge.

There is authority to the effect that notice to a striking employee that he will lose his job unless he returns to work by a certain deadline is an illegal discharge. *N. L. R. B. v. U. S. Cold Storage Corp.*, supra, 203 F. (2d) 924, 927, C. A. 5th, cert. denied, 346 U. S. 818; *N. L. R. B. v. Beaver Meadow Creamery*, 215 F. (2d) 247, 252, C. A. 3rd; *N. L. R. B. v. Clearfield Cheese Co.*, supra, 213 F. (2d) 70, 72-73, C. A. 3rd. There are other



cases which hold that where striking employees are subject to being replaced it is not an unfair labor practice to notify them that their jobs are available until a certain time at which time replacements will be sought. *Kansas Milling Co. v. N. L. R. B.*, 185 F. (2d) 413, 419-420, C. A. 10th; *N. L. R. B. v. Hart Cotton Mills*, 190 F. (2d) 964, 973, C. A. 4th; *N. L. R. B. v. Bradley Washfountain Co.*, supra, 192 F. (2d) 144, 153-154, C. A. 7th; *Rubin Bros. Footwear v. N. L. R. B.*, 203 F. (2d) 486, 487, C. A. 5th. This Court has also so ruled. *Ohio Associated Tel. Co. v. N. L. R. B.*, 192 F. (2d) 664, 667-668, C. A. 6th; *Shopmen's Local Union, etc. v. N. L. R. B.*, 219 F. (2d) 874, C. A. 6th. In the present case, the newspaper advertisement stated—"We would prefer to have you return to your own job." The letter of April 15, 1953 contained the statement: "I sincerely hope you will return by Monday, April 20. You may be sure you will be most welcome." We do not consider the advertisement and letters with respect to replacements an unfair labor practice.

In dismissing so much of the complaint as sought reinstatement of 36 employees the Board found that the record failed to establish that the economic strikers were discriminated against with respect to their reinstatement, and that substantially all of the striking employees were eventually reinstated in accordance with a detailed plan worked out between the Company and the Local. This agreement, dated May 2, 1953, stated that the Company had 59 jobs available, which were not sufficient to take care of all striking employees. It divided the employees who had not returned to work into two classifications, (1) those whose jobs had not been replaced or for whom there were job openings, and (2) those whose jobs had been replaced or whose jobs had been eliminated. Under the 525 specified procedure the available jobs were offered to those in the first classification before being made available for those in the second classification.

This method of reinstatement and its approval by the Board was based upon the Board's ruling that the strike was an economic one rather than an unfair labor practice strike. It is settled law that where the strike is an economic one the employer can replace the striking employees with others in an effort to carry on the business and is not required to discharge those hired to fill the places of strikers upon the election of the latter to resume their employment. *N. L. R. B. v. Mackay*

Radio & Telegraph Co., 304 U. S. 333, 345-346. But he can not discharge economic strikers prior to the time their jobs are filled, or discriminate against them by reason of the strike in reinstating those whose jobs have not been filled. Sec. 2 (3) and 8 (a) (3) of the Act, Sec. 152 (3) and 158 (a) (3), Title 29, U. S. Code. *N. L. R. B. v. U. S. Cold Storage Corp.*, *supra*, 203 F. (2d) 924, 927, C. A. 5th; *Hamilton v. N. L. R. B.*, 160 F. (2d) 465, 468-469, C. A. 6th.

However, if the strike is caused by an unfair labor practice, the striking employees are entitled to reinstatement upon termination of the strike. *N. L. R. B. v. Deena Artware*, *supra*, 198 F. (2d) 645, C. A. 6th; *N. L. R. B. v. Thayer Co.*, 213 F. (2d) 748, 752, C. A. 1st, cert. denied, 348 U. S. 883; *N. L. R. B. v. Pecheur Lozenge Co.*, 209 F. (2d) 393, 404-405, C. A. 2nd, cert. denied, 347 U. S. 953. The Board found that the record did not establish by a preponderance of the evidence that the strike was caused by the Company's refusal to bargain rather than by a failure to reach agreement on the economic issues in dispute. This finding is vigorously challenged by the Union.

The main objective of the Union was to obtain for the Wooster Division employees the higher wages and benefits which it had previously obtained for the Pesco Division employees. The Union's first proposal was substantially what it had obtained in its Pesco contract. The Company's economic proposals were compared with the provisions of the Pesco contract and their shortcomings emphasized. Members of the Pesco Local attended union meetings. The Pesco Local pledged its support in the event of a strike. The Union's proposal on March 19, the day before the strike, listed 30 issues as still in dispute. During the strike Union bulletins and newspaper advertisements discussed the economic issues involved without referring to the recognition clause. Inferences from proven

facts may be drawn by the Board which differ from those  
526 drawn by the examiner. *N. L. R. B. v. Wiltse*, 188 F. (2d) 917, 925, C. A. 6th. Giving full consideration to the trial examiner's contrary view in accordance with the ruling in *Universal Camera Corporation v. N. L. R. B.*, 340 U. S. 474, 492-497, we think the evidence sustains a finding that the dispute over the economic issues was a cause of the strike.

The Union contends that in any event the unfair labor practice of the Company was a contributing cause of the strike which as a matter of law requires that the strike be treated as

an unfair labor practice strike. That such is the legal consequence of such a factual situation appears settled. *N. L. R. B. v. Remington Rand, Inc.*, 94 F. (2d) 862, 872; C. A. 2nd, cert. denied, 304 U. S. 576; *N. L. R. B. v. Sartorius & Co.*, 140 F. (2d) 203, 206, C. A. 2nd; *N. L. R. B. v. Stilley Plywood Co.*, 199 F. (2d) 319, C. A. 4th. The burden rested upon the Company to show that the strike would have taken place if it had not insisted upon its recognition proposal. *N. L. R. B. v. Stackpole Carbon Co.*, 105 F. (2d) 167, 176, C. A. 3rd, cert. denied, 308 U. S. 605. We do not construe the findings of the Board as including an express finding on this factual issue. Counsel for the Board apparently so concedes by his statement in the brief that "the Board in effect found" such to be the case. We agree with counsel for the Union that the Board's findings are inadequate with respect to this issue which is controlling on the question of reinstatement. The Union also challenges the validity of the agreement under which reinstatement was carried out. On these issues the case is remanded to the Board for further findings and rulings.

The order of the Board is modified by striking therefrom the words "and employee ballot proposals or any other proposals not involving conditions of employment" in paragraph 1 (b) the words "and threatening its employees with loss of employment unless they abandon the strike" in paragraph 1 (c), and the final paragraph dismissing so much of the complaint dealing with the alleged refusal of the Company to reinstate certain employees, with like modifications of the posted notice, and as so modified enforcement of the order is decreed. The case is remanded to the Board for further findings and rulings in accordance with the Court's opinion herein.

524a

528 [Clerk's certificate to foregoing transcript omitted in printing.]

529 Supreme Court of the United States

No. 758, October Term, 1956

WOOSTER DIVISION OF BORG-WARNER CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

*Order extending time in which to file petition for writ of certiorari*

December 8, 1956

Upon consideration of the application of Wooster Division of Borg-Warner Corporation,

It is ordered that the time for filing a petition or petitions for writs of certiorari be, and the same is hereby, extended to and including February ninth, 1957.

STANLEY REED,  
*Associate Justice of the Supreme Court of the United States.*

Dated this 8th day of December 1956.

531 Supreme Court of the United States

No. 622, October Term, 1956

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

WOOSTER DIVISION OF BORG-WARNER CORPORATION

*Order allowing certiorari*

Filed March 25, 1957

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted. The case is consolidated with No. 758 and a total of two hours allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Whittaker took no part in the consideration or decision of this application.

533 Supreme Court of the United States

No. 758, October Term, 1956

WOOSTER DIVISION OF BORG-WARNER CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

*Order allowing certiorari*

Filed March 25, 1957

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted limited to question 1 presented by the petition for the writ which reads as follows:

"1. Whether, under circumstances where an employer concededly is bargaining in good faith, in fact, and in fact fully recognizes the Union and its representative status, the employer is guilty of a refusal to bargain as a matter of law, because it sought, over Union objection, the Union's agreement to identify itself with a name other than that prescribed in the Board's certification."

The case is consolidated with No. 622 and a total of two hours allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Whittaker took no part in the consideration or decision of this application.



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JOHN T. FEY, Clerk.

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**In the Supreme Court of the United States**

OCTOBER TERM, 1956

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

WOOSTER DIVISION OF BORG-WARNER CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SIXTH CIRCUIT.

J. LEE RANKIN,

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# In the Supreme Court of the United States

OCTOBER TERM, 1956

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No. —

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

WOOSTER DIVISION OF BORG-WARNER CORPORATION

—  
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SIXTH CIRCUIT  
—

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Sixth Circuit, issued September 12, 1956, denying enforcement of a part of an order issued by the Board against respondent.

## OPINIONS BELOW

The opinion of the court below (Appendix, *infra*, pp. 19-34) is reported at 236 F. 2d 898. The findings of fact, conclusions of law, and order of the Board (R. 385a-506a)<sup>1</sup> are reported at 113 N. L. R. B. 1288.

<sup>1</sup> "R" references are to the Joint Appendix filed in the court below, to which have been added the proceedings in that court. Occasional "G. C. Ex." references are to General Counsel exhibits appearing between pages 74a and 77a of the Joint Appendix. However, the references at p. 5 to "G. C. Ex. 5C" and "G. C. Ex. 4" are to portions of those exhibits which were not printed in the court below.



**JURISDICTION**

The judgment of the court below (Appendix, *infra*, pp. 34-35) was entered on September 12, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 and under Section 10 (e) of the National Labor Relations Act, as amended, 61 Stat. 147, 29 U. S. C. 160 (e).

**QUESTION PRESENTED**

In the course of bargaining negotiations with the certified bargaining representative of its employees, the respondent Company insisted, as a condition precedent to the execution of any agreement, upon the inclusion of a clause providing that the Union agree not to call a strike or reject the Company's last offer in connection with any dispute under the contract (including the amendment or termination of the contract), except after majority approval of such action in a secret ballot election in which all employees in the bargaining unit, both union and nonunion, are permitted to vote. The National Labor Relations Board found that such a clause was in derogation of the Union's status as certified bargaining representative and was outside the statutory bargaining area of terms and conditions of employment. Accordingly the Board concluded that the Company's insistence on the clause, over the Union's objection, constituted an unlawful refusal to bargain in violation of Section 8 (a) (5) of the National Labor Relations Act.

The question presented is whether the court below, in denying enforcement of the Board's order, erred in

holding that such a clause was not in derogation of the Union's representative status and was not outside the statutory bargaining area.

#### STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., *et seq.*), are as follows:

#### UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer \* \* \*

(5) to refuse to bargain collectively with the representative of his employees, subject to the provisions of section 9 (a).

(b) It shall be an unfair labor practice for a labor organization or its agents \* \* \*

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a);

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by

either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession:

\* \* \* \* \*

#### REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment:

\* \* \* \* \*

#### STATEMENT

1. *The facts.*—After winning an election among the employees of respondent ("the Company"), the International Union, United Automobile Workers of America, CIO, was certified by the Board on December 18, 1952, as their exclusive bargaining representative under Section 9 of the Act (R. 388a; 31a-34a). On January 23, 1953, the Union presented a proposed agreement to the Company referring to the Union as "International Union, United Automobile, Aircraft and Agricultural Implement Workers of America and its Local Union No. 1239, U. A. W.-CIO" (R. 475a; 34a, 154a). On February 9, the Company submitted counterproposals, dealing with so-called noneconomic issues, in which it designated the employees' representative as "Local Union 1239, affiliated with the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-

CIO)" (R. 475a; 36a-39a). The Union's representative (Pappin) told the Company representative (Adams) that this provision (the "recognition clause") "violated the certification of the Board" (R. 476a, 392a; 201a).

The Company's counterproposals contained a further clause providing: (a) that, as part of the procedure "for the settlement of all disputes that may arise," all the employees in the bargaining unit, both union and nonunion, would be permitted to vote by secret ballot on whether to accept or reject the Company's "last offer" and "any subsequent offers made"; (b) that the termination of the agreement be among the issues subject to such ballot; and (c) that on issues not subject to arbitration no strike could be called until the settlement procedure (including majority rejection of the Company's "last offer" and "any subsequent offers made") was completed<sup>2</sup> (R. 475a, 390a-392a; G. C. Ex. 5C). The reaction of Pappin, the Union's representative, to this proposal (the "ballot clause") was that he "won't discuss it" because the Union "wouldn't accept it under any circumstances" (R. 476a, 392a; 177-178a, 201a, 319a-320a, 330a-331a, G. C. Ex. 22). There was no further discussion of the ballot clause at any of the eight bargaining conferences held between February 16 and March 11 (R. 206a-207a, 210a).<sup>3</sup>

<sup>2</sup> The Union itself had proposed a ban on strikes over matters subject to arbitration (G. C. Ex. 4, paragraph 45 (b)).

<sup>3</sup> The Union's objections to the Company's recognition clause were reiterated on February 16 and March 4. On the latter

On March 11, the Company submitted its economic proposals as the first part of a "Proposal for Settlement." This economic offer was specifically "made contingent on the satisfactory settlement of all other issues" (R. 394a; 42a, 155a). The following day the Company presented, as "Settlement Proposal—Part Two," its views in support of its noneconomic proposals, including the recognition and ballot clauses, specifying again that "the economic proposal was offered contingent upon settlement of all non-economic issues within the framework of an outline to be presented separately as the second part of the total 'package proposal'" (R. 394a; 49a, 50a-51a, 155a-156a).

Following a Union meeting held on March 15, at which the membership rejected the Company's proposals and approved the executive board's recommendation to call a strike on March 20 if no settlement were reached, Pappin informed Adams at a conference on March 17 that if either the recognition clause or the ballot clause were the only issue in dispute, the employees would strike over either one of them alone, and that the Union would file charges with the Board if the Company insisted on its ballot clause (R. 395a-396a, 404a; 213a-215a, 334a-335a). Further meetings held on March 18 and 19 produced no solution to the dispute, the Company insisting that its last

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date, Pappin told Adams that the Union "could not accept an agreement with only the local union as a party to the agreement" (R. 395a; 209a).

\* In an open letter to the employees on the same day, the Company again argued its position with respect to its noneconomic proposals (R. 80a).



proposal should be accepted. The Union struck on March 20 (R. 396a; 218a-222a)..

The Union's strike bulletin on March 30 listed the ballot clause among the five items constituting "the main points of difference" between the parties (R. 130a-131a). On March 31 and throughout April, the parties continued to meet, the Company remaining adamant notwithstanding the Union's declaration that the ballot and recognition clauses were "fundamental to the settlement of the dispute" and its oft-repeated statements that the Company's insistence thereon could be construed "as a refusal to bargain" and "a violation of law" and that the Union would never accept them "under any conditions" (R. 477a, 397a; 170a-171a, 174a, 176a-178a, 222a, 225a, 226a-227a, 234a-235a, 343a-344a, 345a, 355a, G. C. Ex. 17, 22). On April 7, 1953, the Union filed charges with the Board alleging that the Company was engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (5) of the Act (R. 7a). On April 17, the Company extended the applicability of the ballot clause specifically to cover amendment or modification of the contract (R. 477a, 398a-401a; 59a-60a). Finally, on April 21, Pappin asked Adams whether the Company would withdraw its demands concerning the recognition and ballot provisions if the Union acceded to every other proposal of the Company. Adams insisted that the Company's so-called "package" proposal, including the objectionable clauses, be taken "as it is" (R. 477a, 403a; 235a, 324a-325a).

Upon the reluctant recommendation of the International, the membership of the Local instructed its

bargaining committee on April 25 to accept the best offer it could get from the Company and terminate the strike. With the tacit consent of the International, the Local accepted the Company's terms, and on May 5, entered into the agreement proposed by the Company (R. 478a, 405a; 307a-309a, 360a-362a, 363a-364a). On June 1, 1953, the Union filed with the Board an amended charge supplementing its original charge and reaffirming its allegation that the Company had engaged in unfair labor practices within the meaning of Section 8 (a) (5) (R. 9a).

2. *The Board's decision and order.*—Upon the foregoing facts, the Board (two members dissenting) found in relevant part that the Company "was not merely proposing its recognition and employee ballot clauses as matters which the Union could voluntarily accept or reject," but that it "was adamantly insisting on the inclusion of these two clauses as a condition precedent to the execution of any agreement" (R. 478a). It concluded that such insistence was incompatible with the Company's bargaining obligation under the Act and constituted a refusal to bargain within the meaning of Section 8 (a) (5) of the Act.

The Board held that "the Respondent's liability under Section 8 (a) (5) turns not upon its good faith, but rather upon the legal question of whether the proposals are obligatory subjects of collective bargaining. For, if the proposals are permissible statutory demands, the Respondent was privileged to adamantly insist upon bargaining as to them and the Union could not refuse to so bargain; on the other hand, if they were not, the converse is true" (R. 478a). To

hold otherwise, said the Board, "means, in effect, an amendment to the Act's statement of the required subject of collective bargaining and that [the Union is] required under the Act to bargain about matters wholly unrelated to wages, hours, and other conditions of employment" (R. 479a-480a).

Turning to the two clauses in question, the Board held that fulfillment of the duty "to accord exclusive and unequivocal recognition to the statutory representative \* \* \* is not a subject of obligatory bargaining," and that the Company's recognition clause failed to accord such recognition since it was "in complete derogation of the certificate" which the Board had issued only a few months earlier (R. 480a-481a).

The Board also held that the Company's proposed ballot clause, which prohibited the Union from calling a strike or from amending, modifying, or terminating the agreement without the approval of a majority of the employees, both union and nonunion, was not "an obligatory subject of collective bargaining," but rather a purely internal union matter unrelated to any condition of employment. In the Board's view, the ballot clause represented, in substance, an attempt to resolve economic differences by dealing with the employees as individuals. As the Board stated:

In principle, there is little, if any, difference between an employer taking individual proposals directly to the employees and an employer requiring that the bargaining representative obtain approval or disapproval of any economic proposal as a condition precedent to the representative's exercise of statutory powers. Either situation is in derogation of the

status of the statutory representative and thus violates the exclusive representation concept embodied in the Act. [R. 482a-485a.]

Based upon the above findings and conclusions, the Board's order in relevant part directs the Company to cease and desist from insisting in bargaining negotiations upon its recognition and employee ballot proposals, or any other proposals not involving terms or conditions of employment. Affirmatively, the order directs the Company to bargain with the certified union upon request, and to post the usual notices. (R. 860-862, 874-875.)

3. *The Court of Appeals decision.*—In relevant part, the Court of Appeals upheld the Board's decision with respect to the Company's insistence upon its recognition clause, holding that representative status "is acquired by statute and is not within the area of collective bargaining" (*infra*, p. 27). The court, however, disagreed with the Board's decision regarding the ballot clause and set aside that part of the Board's order enjoining the Company from insisting in collective bargaining negotiations on the proposed employee ballot clause.

The court, in agreement with the Seventh Circuit's decision in *Allis-Chalmers Mfg. Co. v. National Labor Relations Board*, 213 F. 2d 374, concluded that the ballot clause was a statutory subject of bargaining, insistence upon which was valid in the absence of bad faith. Noting that the area of compulsory bargaining is a continually expanding one, and that the Board concedes a no-strike clause to be within it, the court held that "the qualified no-strike proposal of

the Company should not be classified differently”<sup>2</sup> (*infra*, p. 25).

#### REASONS FOR GRANTING THE WRIT

The decision of the court below, essentially in conflict with decisions of the Courts of Appeals for the Fourth and Fifth Circuits, constitutes in the Board's view a serious and unjustifiable departure from the fundamental principle that an employer, to fulfill his bargaining obligation under the Act, must extend full and unqualified recognition to the labor organization which has been designated by his employees as their exclusive representative.

1. Sections 8 (a) (5) and 9 (a) of the Act (*supra*, pp. 3-4) explicitly confer upon an employees' bargaining representative full and exclusive authority to speak and act for such employees in matters pertaining to the bargaining relationship. Acknowledgement of this authority is implicit in the employer's statutory duty to recognize its employees' representative. Thus, it is settled that to permit an employer "to go behind the designated representatives, in order to bargain with the employees themselves," even at the invitation of the employees, "would be subversive of the mode of collective bargaining which the statute has ordained \* \* \*." *Medo Photo Corp. v. National Labor Relations Board*, 321 U. S. 678, 684, 685. It

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<sup>2</sup> The court below enforced, as modified, other portions of the Board order and remanded the case to the Board for further findings with respect to other phases of the Board's order. No issue is presented here with respect to the court's disposition of these other matters.



necessarily follows that the requirement of full recognition is not met where an employer refuses to accept the representative's decision as determinative of the employees' position on certain aspects of the bargaining relationship, but instead demands that the employees speak for themselves.

The decision of the court below would permit just such a restriction on an employer's recognition of a bargaining representative. The ballot clause would, in the final analysis, enable the Company to deal with the employees themselves, rather than with their representative, with respect to every dispute arising under the agreement (as well as the termination and modification of the agreement) and with respect to the appropriate means of resolving those issues. Under the clause, it would not be the Union but the employees themselves who would pass upon the Company's offer. And under that clause, it would not be the Union but the employees themselves who would decide whether to strike in order to compel the Company to recede from its position. Of course, it is not unusual for a union to call for an employee vote on whether to strike or not, but this is a matter relating to the internal affairs of the union *vis-a-vis* the employees.<sup>a</sup> The proposal here in question would in effect eliminate the Union from exercising any effective

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<sup>a</sup> Peterson, *American Labor Unions* (1952) 155, 173; U. S. Department of Labor, Bureau of Labor Statistics, *Strike-Control Provisions in Union Constitutions*, 77 Monthly Labor Review 497, 498 (May 1954); National Industrial Conference Board, *Unions' Strike Vote Provisions*, 16 Management Record 186, 188 (May 1954).

control over the utilization of strike sanctions.' The Company's proposal, therefore, detracted from the Union's status as sole bargaining representative because "[a]ny authority to negotiate derives its principal strength from a delegation to the negotiations of a discretion to make such concessions and accept such advantages as, in the light of all relevant considerations, they believe will best serve the interests of the parties represented." *Ford Motor Co. v. Huffman*, 345 U. S. 330, 337-338.

In ruling that the Company might insist upon its ballot clause as a condition of agreement, the court below held in substance that an employer fulfills his bargaining duty even though he compels the bargaining representative to surrender, as the price of agreement, the authority and discretion lodged in it by virtue of its representative status. In short, the ruling below compels the Union to bargain over its right to full representative status, notwithstanding its statutory certification, and to reacquire at the bargaining table what the Union won through the Board's election processes. Such a conclusion cannot, we think, be squared either with the statutory scheme of collective bargaining or the decisions of this Court. *May Department Stores Co. v. National Labor Relations Board*, 326 U. S. 376, 383-384; *National Licorice Co.*

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<sup>7</sup> In this connection, it is noteworthy, as the Fourth Circuit observed in *National Labor Relations Board v. Darlington Veneer Co.*, 236 F. 2d 85, 88, that Congress when it amended the Act in 1947 rejected a proposal for a referendum on the employer's last proposal before a strike could be called. See also *International Union v. O'Brien*, 339 U. S. 454, 458.

v. *National Labor Relations Board*, 309 U. S. 350, 358; see also *McQuay-Norris Mfg. Co. v. National Labor Relations Board*, 116 F. 2d 748, 751 (C. A. 7), certiorari denied, 313 U. S. 565; *National Labor Relations Board v. Pecheur Lozenge Co.*, 209 F. 2d 393, 403 (C. A. 2), certiorari denied, 347 U. S. 953.

2. It is now settled that a party, in the absence of bad faith, may properly condition agreement upon a matter relating to "terms and conditions of employment," the area of bargaining provided in the Act (Sections 8 (a) (5), 8 (d), 9 (a)). See *National Labor Relations Board v. American National Insurance Co.*, 343 U. S. 395, 407, 409. On the other hand, it is equally well settled that a party, regardless of motive, may not condition agreement upon a matter outside that area.<sup>8</sup>

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<sup>8</sup> See *National Labor Relations Board v. George P. Pilling & Son Co.*, 119 F. 2d 32, 36, 38 (C. A. 3) (employer's insistence that union attempt to organize employer's competitor); *National Labor Relations Board v. Dalton Telephone Co.*, 187 F. 2d 811, 812-813 (C. A. 5), certiorari denied, 342 U. S. 824 (insistence that union register under Georgia law so as to be suable); *Eppinger & Russell Co.*, 56 N. L. R. B. 1259 (cited with approval in *Hill v. Florida*, 325 U. S. 538, 542) (insistence that union obtain Florida license); *Hartsell Mills Co. v. National Labor Relations Board*, 111 F. 2d 291, 292 (C. A. 4) (employer's insistence that union withdraw pending charges); *National Labor Relations Board v. H. G. Hill Stores*, 140 F. 2d 924, 925-926 (C. A. 5) (same); *American Laundry Machinery Co. v. National Labor Relations Board*, 174 F. 2d 124 (C. A. 6), enforcing 76 N. L. R. B. 981, 982-983 (same).

Cf. *National Labor Relations Board v. Louisville Refining Co.*, 102 F. 2d 678, 680-681 (C. A. 6), certiorari denied, 308 U. S. 568 (insistence that union bargain through a local); *National Labor Relations Board v. Aldora Mills*, 180 F. 2d 580 (C. A. 5), enforcing 79 N. L. R. B. 1, 2 (same); *National*

The Company's ballot clause here did not relate to "terms ~~of~~ <sup>and</sup> conditions of employment" within the meaning of the Act. Rather, the ballot clause was an attempt by the Company to dictate to the employees and their chosen representative the mechanics to be utilized in making the decision as to whether to accept the employer's proposals and whether to go out on strike. As pointed out *supra*, pp. 12-13, the condition thus insisted upon by the Company sought to intrude upon the internal affairs of the bargaining representative *vis-a-vis* its constituency and to derogate from the union's status as exclusive bargaining representative. Such a proposal, in the Board's view, is outside the sphere of compulsory bargaining. The reliance of the court below upon the conceded

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*Labor Relations Board v. Taormina Co.*, 207 F. 2d 251, 254 (C. A. 5) (insistence that union secure consent of parent federation); *National Labor Relations Board v. Griswold Mfg. Co.*, 106 F. 2d 713, 719 (C. A. 3) (insistence that union's name be omitted from agreement); *Madden v. International Union, etc.*, 79 F. Supp. 616, 619 (D. D. C.) (holding that a union may not insist that the employer representative be other than the one chosen because the latter was "hard to bargain with" and the union did not like its "attitude").

For other decisions dealing with the scope of "terms and conditions of employment," see, e. g., *National Labor Relations Board v. Black-Clawson Co.*, 210 F. 2d 523, 524 (C. A. 6) (profit sharing); *National Labor Relations Board v. Lehigh Portland Cement Co.*, 205 F. 2d 821, 823 (C. A. 4) (employee housing); *Inland Steel Co. v. National Labor Relations Board*, 170 F. 2d 247, 249-255 (C. A. 7), certiorari denied, 336 U. S. 960 (pension plan); *W. W. Cross & Co. v. National Labor Relations Board*, 174 F. 2d 875, 877-878 (C. A. 1) (group insurance); *Richfield Oil Co. v. National Labor Relations Board*, 231 F. 2d 717, 722-724 (C. A. D. C.), certiorari denied, 351 U. S. 900 (stock purchase plan).

propriety of an employer's insistence upon a no-strike commitment by a union during the life of a contract is misplaced. It is one thing for the employees acting through their representative to waive the right to strike; it is a wholly different matter for the employer to insist that the agreement permit the employees to do so independently of their bargaining representative.

3. The decision below cannot be reconciled with the decision of the Fourth Circuit in *National Labor Relations Board v. Darlington Veneer Co.*, 236 F. 2d 85, and that of the Fifth Circuit in *National Labor Relations Board v. Corsicana Cotton Mills*, 178 F. 2d 344.

In *Darlington Veneer*, the employer insisted that the collective bargaining agreement should become effective only after ratification by a majority of the employees as determined in an election. The Fourth Circuit held that, "By insisting on the ratification clause, the company was attempting to bargain, not with respect to wages, hours or conditions of employment, but with respect to the authority of the duly certified representative of the employees to represent them, a matter fixed by statute," and that "insistence upon such provisions as a condition of entering into any agreement is so unreasonable when objected to by the other party as to furnish of itself a sufficient basis for the finding by the Board of failure to bargain in good faith; \* \* \*." 236 F. 2d at 87, 88.\* The Fourth Circuit added (236 F. 2d at 88):

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\* Cf. *National Labor Relations Board v. Dalton Telephone Co.*, 187 F. 2d 811 (C. A. 5), certiorari denied, 342 U. S. 824.



We are not impressed by the argument that these clauses are a proper means of giving a voice to minority groups of employees. The purpose of collective bargaining is to fix wages, hours and conditions of work by a trade agreement between the employer and his employees. *N. L. R. B. v. Highland Park Mfg. Co.*, 4 Cir., 110 F. 2d 632, 638. This can be done satisfactorily only if a bargaining agent is selected to represent all the employees with full power to speak in their behalf. The purpose of the statute would be largely frustrated if the results of bargaining must be submitted to a vote of the employees, with all the misunderstandings and cross currents that would inevitably arise in an election of that sort. [Footnote omitted.]

In *Corsicana Cotton Mills*, *supra*, the employer insisted upon a contract clause requiring the union to give all employees an opportunity to attend union meetings and providing that "no decision of the Union as bargaining agent shall be determined except upon a majority vote of all employees who attend such a meeting." The Fifth Circuit concluded, contrary to the decision below, that by such insistence the employer had "withheld recognition from the union as bargaining agent." 178 F. 2d at 347.<sup>10</sup>

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<sup>10</sup> The court below, which decided the instant case on September 12, did not advert to the *Darlington* case, decided on August 20. However, the court below sought to distinguish *Corsicana* on the ground that there the employer sought to condition the effectiveness of the entire contract on employee ratification while here the employees, under the employer's proposal, "are permitted to express their views on only one phase

## CONCLUSION

For the purpose of resolving this conflict between circuits, and because of the importance of the question presented in the administration of the Act and to both employers and unions in the practical conduct of collective bargaining negotiations, it is respectfully submitted that this petition for a writ of certiorari should be granted.

J. LEE RANKIN,  
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*National Labor Relations Board.*

DECEMBER, 1956.

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of the contract which was a matter of such vital importance as to justify an expression of their views" (*infra*, p. 27). The distinction is not one of principle. The representative's exclusive authority encompasses not only the negotiation, but also the administration of collective bargaining agreements, and there is no logical basis, in this context, for drawing a distinction between the two.

## APPENDIX

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### 1. OPINION BELOW

In the United States Court of Appeals for the Sixth  
Circuit

Nos. 12687, 12730

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

WOOSTER DIVISION OF BORG-WARNER CORPORATION,  
RESPONDENT

---

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT  
AND AGRICULTURAL IMPLEMENT WORKERS OF AMER-  
ICA, UAW-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

AND

WOOSTER DIVISION OF BORG-WARNER CORPORATION,  
RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

Decided September 12, 1956

Before MARTIN, MILLER and STEWART, *Circuit Judges*

MILLER, *Circuit Judge*. These cases are before the  
Court upon a petition by the National Labor Rela-  
tions Board for enforcement of its order against the

respondent Wooster Division of Borg-Warner Corporation; hereinafter called the Company, and upon a petition by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, (UAW-CIO), hereinafter called the International or the Union, to review and set aside so much of the order as dismissed the complaint against the Company. The Company, which is an unincorporated division of Borg-Warner Corporation is engaged at Wooster, Ohio, in the manufacture and sale of fuel and hydraulic pumps. Jurisdiction of the proceedings under Section 10 (e) and (f) of the National Labor Relations Act is conceded.

Following an intensive election campaign, the Board on December 18, 1952, certified the Union as the exclusive representative of the Company's Wooster employees. On January 23, 1953, the Union presented a proposed agreement to the Company which referred to the Union as "International Union, United Automobile, Aircraft and Agricultural Implement Workers of America and its Local Union No. 1239, UAW-CIO." The Company submitted counter proposals on so-called noneconomic issues to the Union on February 9th in which it designated the employees' representative as "Local Union 1239, affiliated with the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO)." The Union's representative told the Company representatives that this provision violated the certification of the Board.

This counter proposal of the Company also provided that on issues not subject to arbitration no strike could be called unless a majority of the employees in the bargaining unit, both union and non-union, voted by secret ballot on whether to accept or reject the Company's last offer or any subsequent offer. The Un-

ion's representative stated that he would not discuss this ballot proposal because the Union would not accept it under any circumstances.

Bargaining conferences were held during February and March. The Union's proposals were substantially the same as were contained in an agreement which it had secured for employees at the Cleveland Pesco Division of Borg-Warner Corporation. The Company submitted its economic proposals on March 11th. They were not satisfactory to the Union. On March 14, the Union distributed among the employees a document showing under 21 separate headings the difference between the Company's offer and the provisions of the Pesco agreement. A strike at the plant was called if no solution of the overall issue was reached by March 20th. There were bargaining conferences on March 17, 18 and 19 without reaching an agreement. At the meeting on March 19, the Union submitted a counter proposal covering thirty issues still in dispute. The Company took the position that its last proposal should be accepted and no agreement was reached. The strike commenced on March 20.

Bargaining continued during April. The Company made a final proposal to change the name of the representative to "Local Union 1239 of United Automobile, Aircraft and Agricultural Implement Workers of America." The Union countered with an offer to make its name read "The International, Local 1239." No agreement was reached, the Union insisting that the International be the primary party and the Company insisting that the primary party be the Local. The Company also refused to recede from its insistence upon the employee ballot proposal. On April 21, the Union asked the Company if it would withdraw its demands concerning the recognition and employee ballot provisions if the Union acceded to all the other



proposals of the Company. The Company representative stated that the Company thought its proposal was fair and that it should be taken "as it is."

On April 25th, the International recommended that the employees accept the best offer they could get from the Company and return to work. On May 5th, a collective bargaining agreement retroactive to March 20th was entered into between the Local and the Company, which recognized the Local as the exclusive bargaining agent and contained the disputed employee ballot proposal.

The Union filed its initial charge on April 7, 1953. Following hearings and the Intermediate Report of the Trial Examiner, the Board, with two of its members dissenting, held that the Company did not propose its recognition and employee ballot clauses as matters which the Union could voluntarily accept or reject, but adamantly insisted upon the inclusion of these two clauses as a condition precedent to the execution of any agreement; that its liability under Section 8 (a) (5) turned not upon its good faith, but rather upon the legal question of whether the proposals were obligatory subjects of collective bargaining; that the Company was obligated to accord exclusive and unequivocal recognition to the statutory representative and that its insistence upon making the Local not only a party to the agreement but the only party empowered to represent the employees was in complete derogation of the certificate; that the employee ballot proposal was simply an attempt to resolve economic differences at the bargaining table between an employer and the statutory agent by dealing with the employees as individuals, which was in derogation of the status of the statutory representative and violated the representation concept embodied in the Act. It held that the Company by adamantly in-

sisting upon the inclusion of its proposed recognition and employee vote clauses as a condition to the execution of any contract refused to bargain in violation of Section 8 (a) (5) of the Act.

The Board also held that the Company had interfered with its employees in violation of Section 8 (a) (1) of the Act by soliciting them to abandon the Union and return to work, and by having advised the strikers that they would be, and were, deemed to have quit their jobs by failing to return to work by April 20th.

The Board held, however, contrary to the Trial Examiner, that the strike resulted from the parties' failure to reach agreement on the economic issues in dispute, and was not attributable to the Company's insistence on its recognition and employee ballot proposals. It was accordingly not an unfair labor practice strike entitling the strikers to reinstatement as a matter of right. It dismissed so much of the complaint as charged the Company with refusing to reinstate any employee in violation of Section 8 (a) (3) and (1) of the Act. The Union seeks a review of this ruling.

The Order, enforcement of which is now sought by the Board, directed the Company to cease and desist from (1) refusing to bargain collectively with the Union; (2) insisting upon the recognition of a union other than the statutory representative and insisting upon employee ballot proposals, or any other proposals not involving conditions of employment; (3) soliciting or threatening with loss of employment the striking employees; and (4) in any other manner interfering with its employees in the exercise of their rights under the Act. It affirmatively directed the Company to bargain collectively with the Union with respect to rates of pay, hours, and other conditions of

employment, and if an understanding was reached, embody such understanding in a signed agreement.

The Board in its ruling takes the position that the Company's liability to bargain collectively under Section 8 (a) (5) of the Act turns not upon its good faith, but rather upon the legal question of whether the proposals are obligatory subjects of collective bargaining under the statute. It recognizes that if the proposals are permissible statutory demands, the Company was privileged to adamantly insist upon bargaining as to them, provided the bargaining was conducted in good faith. *N. L. R. B. v. American National Ins. Co.*, 343 U. S. 395, 404 \* \* \*; *N. L. R. B. v. United Clay Mines Corp.*, 219 F. (2d) 120, C. A. 6th. On the other hand, it contends that the proposals are not within the statutory subjects of bargaining, namely, "wages, hours, and other terms and conditions of employment" (Sec. 8 [d] of the Act), and that the Company's insistence upon them to the point of impasse, even though in good faith, made the action illegal per se. *N. L. R. B. v. P. Lorillard Co.*, 117 F. (2d) 921, C. A. 6th; *N. L. R. B. v. Taormina*, 207 F. (2d) 251, C. A. 5th; *N. L. R. B. v. Dalton Telephone Co.*, 187 F. (2d) 811, C. A. 5th, cert. denied, 342 U. S. 824 \* \* \*; *N. L. R. B. v. Corsicana Cotton Mills*, 178 F. (2d) 344, C. A. 5th.

In *Allis-Chalmers Mfg. Co. v. N. L. R. B.*, 213 F. (2d) 374, 376, C. A. 7th, the Court held that if the strike vote clause in that case was included within the statutory subjects of bargaining the employer was permitted to insist upon its position with respect thereto, provided the bargaining was conducted in good faith, but if it was not included within the statutory subjects of bargaining it could not be insisted upon by the employer to the point of creating an impasse in the negotiations. The Court, however ruled, contrary to the ruling of the Board in this case,

that the strike vote proposal fell within the statutory subjects of bargaining about which the employer had the right to bargain in good faith. We are in accord with that ruling, without attempting to pass upon the correctness of the Court's statement with respect to a situation where a proposed clause is not within the statutory subjects of bargaining. The bargaining area of the Act has no well defined boundaries; the phrase "conditions of employment" has not acquired a hardened and precise meaning. Management and labor are now being required to bargain collectively about issues which formerly were not considered as proper issues for inclusion in the usual collective bargaining agreement. *Inland Steel Co. v. N. L. R. B.*, 170 F. (2d) 247, 251, C. A. 7th (retirement and pension plans), *W. W. Cross & Co. v. N. L. R. B.*, 174 F. (2d) 875, C. A. 1st (group insurance program), *Richfield Oil Corp. v. N. L. R. B.*, 231 F. (2d) 717, C. A. D. C. (stock purchase plan), *N. L. R. B. v. Niles-Bement-Pond Co.*, 199 F. (2d) 713, C. A. 2nd (Christmas bonus), *N. L. R. B. v. Reed & Prince Mfg. Co.*, 205 F. (2d) 131, 136, C. A. 1st, (Check-off proposal). The area of compulsory collective bargaining is obviously an expanding one. The Board concedes that a no-strike clause is within the area. *N. L. R. B. v. American National Insurance Co.*, supra, 343 U.S. at p. 408 \* \* \*, note 22. The qualified no-strike proposal of the Company should not be classified differently. *Allis-Chalmers Mfg. Co. v. N. L. R. B.*, supra. In our opinion, the strike ballot proposal was within the area.

The Board contends that to permit an employer "to go behind the designated representatives in order to bargain with the employees themselves" would undermine the representative status of the Union contrary to the provisions of Section 9 (a) of the Act \* \* \* which

provides that the representatives selected by the majority of the employees "shall be the exclusive representatives of all the employees" in the bargaining unit. *Medo Photo Supply Corp. v. N. L. R. B.*, 321 U. S. 678, 684, 685, 687 \* \* \*; *May Department Stores Co. v. N. L. R. B.*, 326 U. S. 376, 383-384 \* \* \*. In *Medo Photo Supply Corp. v. N. L. R. B.*, the Court held that orderly collective bargaining requires that the employer be not permitted to go behind the designated representatives, in order to bargain with the employees themselves, even though the employees asked that the designated representatives be disregarded; that the duty of the employer to bargain collectively with the chosen representatives of his employees also involves "the negative duty to treat with no other." In that case, however, the attempt to go behind the designated representatives was without the consent of the representatives. In the present case, there was no attempt to bargain with the employees instead of the designated representatives. The Union was at all times recognized as the exclusive representative of the employees; the bargaining was done with it, not with the employees. Any requirement that the employees approve the action of the Union would be the result of an agreement with the Union to that effect. We do not believe that the ballot proposal denied in any way the unqualified recognition of the certified bargaining agent within the meaning of the Act.

The Board urges upon us the ruling in *N. L. R. B. v. Corsicana Cotton Mills*, 178 F. (2d) 344, C. A. 5th. In that case the employer insisted that the contract contain a provision to the effect that non-union employees should have a right to attend union meetings and to vote upon the provisions of the contract negotiated by the union as bargaining agent. The Court held that such insistence withheld recognition from



the Union as bargaining agent. The facts in that case go far beyond the present case. In that case the certified representative would have been unable to make *any* binding agreement with the employer, who as a practical matter would be dealing with all of the employees in agreeing upon the terms of the contract. In the present case, the non-union employees are permitted to express their views on only one phase of the contract, which was a matter of such vital importance as to justify an expression of their views.

The Company contends that the recognition proposal is also within the bargaining area, pointing out that Section 8 (d) of the Act defining the obligation to bargain collectively does not restrict it to conferring in good faith with respect to wages, hours and other terms and conditions of employment but includes "the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached. \* \* \*". We do not think the Section is to be so broadly construed. Section 8 (a) (5), which imposes the duty of collective bargaining, is by its express terms tied in with Section 9 (a) which makes the designated representative the exclusive representative of the employees for the purpose of collective bargaining. This status is acquired by statute and is not within the area of collective bargaining. *N. L. R. B. v. Louisville Refining Co.*, 102 F. (2d) 678, 680-681, C. A. 6th, certiorari denied, 308 U. S. 568 \* \* \*; *N. L. R. B. v. Deena Artware*, 198 F. (2) 645, 651, C. A. 6th, certiorari denied, 345 U. S. 906 \* \* \*. Section 8 (d) must be construed in connection with Sections 8 (a) (5) and 9 (a). When so considered, the phrase "negotiation of an agreement, or any question arising thereunder" means the terms of the agreement rather than the party with whom the agreement is being negotiated.

The Company attempts to justify its position by pointing out that it at all times recognized the Union as the exclusive bargaining agent and did all of its bargaining with it as such agent. It contends that there is nothing in the Act which requires that after all issues have been agreed upon the written contract embodying the agreement must be made with the agent who negotiated the agreement. Although there is no specific provision to that effect, we believe it is clearly implied that the designated bargaining agent is the party with whom the contract is to be made unless it voluntarily relinquishes such right in favor of another. The collective bargaining contract is not the contract of employment. It is rather the trade agreement which controls the individual contracts of employment. *J. I. Case Co. v. N. L. R. B.*, 321 U. S. 332 \* \* . It is a strained construction of the Act to say that the party representing the employees and negotiating such a trade agreement for their benefit is not entitled to complete the job by having the contract which it has negotiated executed with it as the representative of the individual employees for whom it is acting. Such a contract is necessarily executed with a representative of the individual employees. We fail to see the reasoning which would authorize the substitution of the Local, not the official representative of the employees, for the Union which is the official representative of the employees; over the objections of the Union. The fact that the Union offered to share this right with its Local did not give the Company the right to insist that it relinquish the right completely. The Company was not within its rights in insisting upon its proposal pertaining to this phase of the case.

While the strike was in progress the Company solicited its employees through newspaper and radio

advertising to return to work. It stressed the advantages to be derived by returning to work and the unreasonableness of the Union's demands. It offered free bus transportation for this purpose. Two Company foremen visited the Local's vice-president at his home for that purpose and suggested that an agreement might be arrived at "if the Local would forget the International." The Board ruled that such conduct violated Section 8 (a) (1) of the Act because it was an attempt to deal individually with the employees rather than with the Union and was reasonably calculated to undermine the Union. We recognize the rule urged upon us by the Company that communications with employees by an employer are protected under the First Amendment of the Constitution so long as such communications contain no threat of reprisal or promise of benefit. *N. L. R. B. v. Ford Motor Co.*, 114 F. (2) 905, 913-915, C. A. 6th, certiorari denied, 312 U. S. 689 \* \* \* ; *N. L. R. B. v. Cleveland Trust Co.*, 214 F. (2d) 95, 99, C. A. 6th. Under the rule the employer is free to say to his employees that he wishes to carry on production and, if the employees desire so to do, they may return to work. *N. L. R. B. v. Bradley Washfountain Co.*, 192 F. (2d) 144, 153, C. A. 7th. For the purposes of this opinion, it is sufficient to say that in our opinion the communications complained of went beyond permissible limits. *N. L. R. B. v. Montgomery Ward & Co.*, 133 F. (2) 676, 681, C. A. 9th \* \* \* ; *N. L. R. B. v. Clearfield Cheese Co.*, 213 F. (2d) 70, 72-83, C. A. 3rd; *N. L. R. B. v. James Thompson & Co.*, 208 F. (2d) 743, 748, C. A. 2nd; *May Department Stores Co., v. N. L. R. B.*, 326 U. S. 376, 385 \* \* \* .

The Company also advised its striking employees by newspaper advertisement and individual letters that their jobs were still open if they returned to work, that the Company was hiring new people every day

but would hold the jobs open until Monday, April 20, 1953, at which time it would start hiring replacements, and that setting a deadline for return was a necessary move in order to know who was returning and who was not. In a letter of April 15, 1953 it was said: "If you do not return, I wish you the best of success in your new job whatever and wherever it may be." In a letter of April 22, 1953, addressed to "Those Who Chose to Give Up Their Jobs at Wooster Division" the Company's President stated: "When you did not report for work on April 20, it became apparent that you had decided to give up your job here." The Board found this to be a violation of Section 8 (a) (1) of the Act in that it was an attempt to cause the employees to abandon the strike by unlawful threats of discharge.

There is authority to the effect that notice to a striking employee that he will lose his job unless he returns to work by a certain dead-line is an illegal discharge. *N. L. R. B. v. U. S. Cold Storage Corp.*, supra, 203 F. (2d) 924, 927, C. A. 5th, certiorari denied, 346 U. S. 818; *N. L. R. B. v. Beaver Meadow Creamery*, 215 F. (2d) 247, 252, C. A. 3rd; *N. L. R. B. v. Clearfield Cheese Co.*, supra, 213 F. (2d) 70, 72-73, C. A. 3rd. There are other cases which hold that where striking employees are subject to being replaced it is not an unfair labor practice to notify them that their jobs are available until a certain time at which time replacements will be sought. *Kansas Milling Co. v. N. L. R. B.*, 185 F. (2d) 413, 419-420, C. A. 10th; *N. L. R. B. v. Hart Cotton Mills*, 190 F. (2d) 964, 973, C. A. 4th; *N. L. R. B. v. Bradley Washfountain Co.*, supra, 192 F. (2d) 144, 153-154, C. A. 7th; *Rubin Bros. Footwear v. N. L. R. B.*, 203 F. (2d) 486, 487, C. A. 5th. This Court has also so ruled. *Ohio Associated Tel. Co. v. N. L. R. B.*, 192 F. (2d) 664, 667-668, C. A. 6th;

*Shopmen's Local Union, etc. v. N. L. R. B.*, 219 F. (2d) 874, C. A. 6th. In the present case, the newspaper advertisement stated—"We would prefer to have you return to your own job." The letter of April 15, 1953, contained the statement: "I sincerely hope you will return by Monday, April 20. You may be sure you will be most welcome." We do not consider the advertisement and letters with respect to replacements an unfair labor practice.

In dismissing so much of the complaint as sought reinstatement of 36 employees the Board found that the record failed to establish that the economic strikers were discriminated against with respect to their reinstatement, and that substantially all of the striking employees were eventually reinstated in accordance with a detailed plan worked out between the Company and the Local. This agreement, dated May 2, 1953, stated that the Company had 59 jobs available, which were not sufficient to take care of all striking employees. It divided the employees who had not returned to work into two classifications, (1) those whose jobs had not been replaced or for whom there were job openings, and (2) those whose jobs had been replaced or whose jobs had been eliminated. Under the specified procedure the available jobs were offered to those in the first classification before being made available for those in the second classification.

This method of reinstatement and its approval by the Board was based upon the Board's ruling that the strike was an economic one rather than an unfair labor practice strike. It is settled law that where the strike is an economic one the employer can replace the striking employees with others in an effort to carry on the business and is not required to discharge those hired to fill the places of strikers upon the election of the latter to resume their employment. *N. L. R. B. v.*



*Mackay Radio & Telegraph Co.*, 304 U. S. 333, 345-346 \* \* \*. But he can not discharge economic strikers prior to the time their jobs are filled, or discriminate against them by reason of the strike in reinstating those whose jobs have not been filled. Sec. 2 (3) and (8) (a) (3) of the Act, Sec. 152 (3) and 158 (a) (3), Title 29, U. S. C. A. *N. L. R. B. v. U. S. Cold Storage Corp.*, supra, 203 F. (2d) 924, 927, C. A. 5th; *Hamilton v. N. L. R. B.*, 160 F. (2d) 465, 468-469, C. A. 6th.

However, if the strike is caused by an unfair labor practice, the striking employees are entitled to reinstatement upon termination of the strike. *N. L. R. B. v. Deena Artware*, supra, 198 F. (2d) 645, C. A. 6th; *N. L. R. B. v. Thayer Co.*, 213 F. (2d) 748, 752, C. A. 1st certiorari denied, 348 U. S. 883 \* \* \*; *N. L. R. B. v. Pecheur Lozenge Co.*, 209 F. (2d) 393, 404-405, C. A. 2nd. certiorari denied, 347 U. S. 953 \* \* \*. The Board found that the record did not establish by a preponderance of the evidence that the strike was caused by the Company's refusal to bargain rather than by a failure to reach agreement on the economic issues in dispute. This finding is vigorously challenged by the Union.

The main objective of the Union was to obtain for the Wooster Division employees the higher wages and benefits which it had previously obtained for the Pesco Division employees. The Union's first proposal was substantially what it had obtained in its Pesco contract. The Company's economic proposals were compared with the provisions of the Pesco contract and their shortcomings emphasized. Members of the Pesco Local attended union meetings. The Pesco Local pledged its support in the event of a strike. The Union's proposal on March 19, the day before the strike, listed 30 issues as still in dispute. During the strike Union bulletins and newspaper advertisements discussed the economic issues involved

without referring to the recognition clause. Inferences from proven facts may be drawn by the Board which differ from those drawn by the examiner. *N. L. R. B., v. Wiltse*, 188 F. (2) 917, 925, C. A. 6th. Giving full consideration to the trial examiner's contrary view in accordance with the ruling in *Universal Camera Corporation v. N. L. R. B.*, 340 U. S. 474, 492-497 \* \* \* we think the evidence sustains a finding that the dispute over the economic issues was a cause of the strike.

The Union contends that in any event the unfair labor practice of the Company was a contributing cause of the strike which as a matter of law requires that the strike be treated as an unfair labor practice strike. That such is the legal consequence of such a factual situation appears settled. *N. L. R. B. v. Remington Rand, Inc.*, 94 F. (2d) 862, 872, C. A. 2nd, certiorari denied, 304 U. S. 576 \* \* \*; *N. L. R. B. v. A. Sartorius & Co.*, 140 F. (2d) 203, 206, C. A. 2nd; *N. L. R. B. v. Stilley Plywood Co.*, 199 F. (2d) 319, C. A. 4th. The burden rested upon the Company to show that the strike would have taken place even if it had not insisted upon its recognition proposal. *N. L. R. B. v. Stackpole Carbon Co.*, 105 F. (2d) 167, 176, C. A. 3rd, certiorari denied, 308 U. S. 605. \* \* \*. We do not construe the findings of the Board as including an express finding on this factual issue. Counsel for the Board apparently so concedes by his statement in the brief that "the Board in effect found" such to be the case. We agree with counsel for the Union that the Board's findings are inadequate with respect to this issue which is controlling on the question of reinstatement. The Union also challenges the validity of the agreement under which reinstatement was carried out. On these issues the case is remanded to the Board for further findings and rulings.

The order of the Board is modified by striking therefrom the words "and employee ballot proposals or any other proposals not involving conditions of employment" in paragraph 1 (b), the words "and threatening its employees with loss of employment unless they abandon the strike" in paragraph 1 (c), and the final paragraph dismissing so much of the complaint dealing with the alleged refusal of the Company to reinstate certain employees, with like modifications of the posted notice, and as so modified enforcement of the order is decreed. The case is remanded to the Board for further findings and rulings in accordance with the Court's opinion herein.

## 2. JUDGMENT BELOW

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the Honorable NATIONAL LABOR RELATIONS BOARD,  
*Greeting:*

WHEREAS, lately in the National Labor Relations Board before you or some of you, in *Matter of Wooster Division of Borg-Warner Corporation and International Union, United Automobile Aircraft & Agricultural Implement Workers of America, CIO* (Case No. 8-CA-830), a decision and order was entered on the 26th day of August 1955;

AND WHEREAS, the said National Labor Relations Board petitioned this court as appears by inspection of the transcript of record of the said National Labor Relations Board which was brought into the United States Court of Appeals for the Sixth Circuit by virtue of a petition for enforcement agreeably in the Act of Congress, in such cases made and provided, fully and at large appears.

AND WHEREAS, in the present term of October, in the year of our Lord, one thousand nine hundred and

fifty-five, the said cause came on to be heard before the said United States Court of Appeals for the Sixth Circuit, on the said transcript of record, and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now ordered, adjudged, and decreed by this Court that the order of the National Labor Relations Board be and it is modified by striking therefrom the words "and employee ballot proposals or any other proposals not involving conditions of employment" in paragraph 1 (b), the words "and threatening its employees with loss of employment unless they abandon the strike" in paragraph 1 (c), and the final paragraph dismissing so much of the complaint dealing with the alleged refusal of the Company to reinstate certain employees, with like modifications of the posted notice, and as so modified enforcement of the order is decreed. The case is remanded to the Board for further findings and ruling in accordance with the Court's opinion herein.

YOU, THEREFORE, ARE HEREBY COMMANDED that such proceedings be had in said cause, in conformity with the opinion and judgment of this court, as according to right and justice, and the laws of the United States, ought to be had, the said petition for enforcement notwithstanding.

WITNESS, the Honorable EARL WARREN, Chief Justice of the United States, the sixth day of November in the year of our Lord one thousand nine hundred and fifty-six.

CARL W. REUSS,  
*Clerk, United States Court of Appeals for  
 the Sixth Circuit.*

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# In the Supreme Court of the United States

OCTOBER TERM, 1957

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

WOOSTER DIVISION OF BORG-WARNER CORPORATION

WOOSTER DIVISION OF BORG-WARNER CORPORATION,  
*Cross-Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD

On Writs of Certiorari to the United States Court of Appeals  
for the Sixth Circuit

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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---

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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## **OPINIONS BELOW**

The opinion of the court below (R. 512a-523a) is reported at 236 F. 2d 898. The findings of fact, con-



clusions of law, and order of the Board (R. 385a-506a)<sup>1</sup> are reported at 113 NLRB 1288.

### **JURISDICTION**

The judgment of the court below (R. 511a-512a) was entered on September 12, 1956. The writs were granted on March 26, 1957. 353 U.S. 907.<sup>2</sup> The jurisdiction of this Court rests upon 28 U.S.C. 1254 and Section 10(e) of the National Labor Relations Act, as amended, 61 Stat. 147, 29 U.S.C. 160(e).

### **QUESTIONS PRESENTED**

In the course of bargaining negotiations with the certified bargaining representative of its employees the Company insisted, as conditions precedent to the execution of any agreement, upon the inclusion of two clauses: (1) a "ballot clause" providing that the Union agree not to call a strike or reject the Company's last offer in connection with any dispute under the contract (including the amendment or termination of the contract), except after majority approval of such action in a secret ballot election in which all employees in the bargaining unit, both union and non-union, are permitted to vote; (2) a "recognition clause" naming the Union's local affiliate as the contracting labor organization.

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<sup>1</sup> "R" references are to the printed record. Occasional "G.C. Ex." references are to General Counsel exhibits appearing between pages 74a and 77a of the record. However, the references at p. 6 to "G.C. Ex. 5C" and "G.C. Ex. 4" are to portions of those exhibits which have not been printed; the parties have stipulated that reference may be made to them.

<sup>2</sup> The writ in No. 78 was limited to the first question presented by the cross-petition.

The Board found that such clauses were in derogation of the Union's status as certified bargaining representative and were outside the statutory bargaining area of terms and conditions of employment. Accordingly, the Board concluded that the Company's insistence on the clauses, over the Union's objection, constituted an unlawful refusal to bargain, in violation of Section 8(a)(5) of the National Labor Relations Act. The court below enforced the Board's order with respect to the recognition clause but not with respect to the ballot clause.

1. The question presented in No. 53 is whether the court below erred in holding that the ballot clause was not in derogation of the Union's representative status and was not outside the statutory bargaining area.

2. The question presented in No. 78 is whether the court below properly held that the recognition clause was in derogation of the Union's representative status and was outside the statutory bargaining area.

### **STATUTE INVOLVED**

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), are as follows:

#### **UNFAIR LABOR PRACTICES**

Sec. 8. (a) It shall be an unfair labor practice for an employer \* \* \*

\* \* \* \* \*

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

\* \* \* \* \*

(b) It shall be an unfair labor practice for a labor organization or its agents \* \* \*

\* \* \* \* \*

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a);

\* \* \* \* \*

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession:

\* \* \* \* \*

## REPRESENTATIVES AND ELECTIONS

Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment:

\* \* \* \* \*

(c)(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

\* \* \* \* \*

the Board shall investigate such petition and if it has reasonable cause to believe that a question of

representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

\* \* \* \* \*

(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

\* \* \* \* \*

### STATEMENT

1. *The facts.*—After winning an election among the employees of the Company, the International Union, United Automobile Workers of America, CIO, was certified by the Board on December 18, 1952, as their exclusive bargaining representative under Section 9 of the Act (R. 388a; 31a-34a). On January 23, 1953, the Union presented a proposed agreement to the Company referring to the Union as "International Union, United Automobile, Aircraft and Agricultural Implement Workers of America and its Local Union No. 1239, U.A.W.-CIO" (R. 475a; 34a, 154a). The Union had chartered the Local shortly after the Board's certification had issued (R. 239a-240a, 388a). On February 9, the Company submitted counterproposals, dealing with so-called non-economic issues, in which it designated the employees' representative as "Local Union 1239, affiliated with the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO)" (R.

475a; 36a-39a). The Union's representative, Pappin, told the Company representative, Adams, that this provision (the "recognition clause") "violated the certification of the Board" (R. 476a, 392a; 201a).

The Company's counterproposals contained a further clause providing: (a) that, as part of the procedure "for the settlement of all disputes that may arise," all the employees in the bargaining unit, both union and nonunion, would be permitted to vote by secret ballot on whether to accept or reject the Company's "last offer" and "any subsequent offers made"; (b) that the termination of the agreement be among the issues subject to such ballot; and (c) that on issues not subject to arbitration no strike could be called until the settlement procedure (including majority rejection of the Company's "last offer" and "any subsequent offers made") was completed<sup>3</sup> (R. 475a, 390a-392a; G.C. Ex. 5C). The reaction of Pappin, the Union's representative, to this proposal (the "ballot clause") was that he "won't discuss it" because the Union "wouldn't accept it under any circumstances" (R. 476a, 392a; 177a-178a, 201a, 319a-320a, 330a-331a, G.C. Ex. 22). There was no further discussion of the ballot clause at any of the eight bargaining conferences held between February 16 and March 11 (R. 206a-207a, 210a). The Union's objections to the Company's recognition clause\* were reiterated on February 16 and March 4. On the latter date, Pappin told Adams that the Union "could not accept an agreement with only the local union as a party to the agreement" (R. 395a; 204a, 209a).

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<sup>3</sup> The Union itself had proposed a ban on strikes over matters subject to arbitration (G.C. Ex. 4, paragraph 45(b)).



On March 11, the Company submitted its economic proposals as the first part of a "Proposal for Settlement." This economic offer was specifically "made contingent on the satisfactory settlement of all other issues" (R. 394a; 42a, 155a). The following day the Company presented, as "Settlement Proposal—Part Two," its views in support of its non-economic proposals, including the recognition and ballot clauses, specifying again that "the economic proposal was offered contingent upon settlement of all non-economic issues within the framework of an outline to be presented separately as the second part of the total 'package proposal'" (R. 394a; 49a, 50a-51a, 155a-156a).<sup>4</sup> Explaining its proposal "that the contract be made between the Local Union and the Company," the latter declared "The Local Union is most familiar with the employees, the operations, the working conditions, and the local community situation. The local union will have to live with the results of these negotiations. Therefore, the local union should have the right to make its own agreement" (R. 49a). The ballot proposal was sought to be justified on the ground that "a well disciplined minority could \* \* \* stack Union meetings and call unwarranted strikes" and that the clause would enable "the Union to protect the majority of the employees and itself against this possibility \* \* \*" (R. 51a).

Following a Union meeting held on March 15, at which the membership rejected the Company's proposals and approved the executive board's recom-

<sup>4</sup> In an open letter to the employees on the same day, the Company again argued its position with respect to its non-economic proposals (R. 80a).

mendation to call a strike on March 20 if no settlement were reached, Pappin informed Adams at a conference on March 17 that if either the recognition clause or the ballot clause were the only issue in dispute, the employees would strike over either one of them alone (R. 395a-396a, 404a; 213a-215a, 334a-335a). Further meetings held on March 18 and 19 produced no solution to the dispute, the Company insisting that its last proposal should be accepted. The Union struck on March 20 (R. 396a; 218-222a).

On March 31 and throughout April, the parties continued to meet, the Company remaining adamant notwithstanding the Union's declaration that the ballot and the recognition clauses were "fundamental to the settlement of the dispute" and its oft-repeated statements that the Company's insistence thereon could be construed "as a refusal to bargain" and "a violation of law" and that the Union would never accept them "under any conditions" (R. 477a, 397a; 170a-171a, 174a, 176a-178a, 222a, 225a, 226a-227a, 234a-235a, 343a-344a, 345a, 355a, G.C. Ex. 17, 22). On April 7, 1953, the Union filed charges with the Board alleging that the Company was engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act (R. 7a). On April 17, the Company extended the applicability of the ballot clause specifically to cover amendment or modification of the contract (R. 477a, 398a-401a; 59a-60a, 232a).

At the same time, the Company made its final proposal regarding the recognition clause, changing the designation of the contracting union from "Local Union 1239, affiliated with the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America" to "Local Union 1239 of

United Automobile, Aircraft and Agricultural Implement Workers of America" (R. 401a; 232a). The Union countered this last proposal with an offer to make its name read "the International, Local 1239" (R. 402a; 233a). However, the intent of both parties remained unchanged, the Union insisting that the International be the primary party and the Company insisting that the primary party be the Local (R. 476a-477a, 402a-403a; 234a, 352a-353a). Blythe, the Company's president and general manager, testified that the Company "did not have to" recognize the International as a party to the contract and that "the position of the company was at all times the agreement would be with the local" (R. 476a-477a, 394a-395a; 175a, 169a).

Finally, on April 21, Pappin asked Adams whether the Company would withdraw its demands concerning the recognition and ballot provisions if the Union acceded to every other proposal of the Company. Adams insisted that the Company's so-called "package" proposal, including the objectionable clauses, be taken "as it is" (R. 477a, 403a; 235a, 324a-325a).

Upon the recommendation of the International, the membership of the Local instructed its bargaining committee on April 25 to accept the best offer it could get from the Company and terminate the strike. With the tacit consent of the International, the Local accepted the Company's terms, and on May 5 entered into the agreement proposed by the Company (R. 478a, 405a; 307a-309a, 360a-364a). By this agreement in terms between the Company and the Local, the Company expressly recognized the latter as "the exclusive bargaining agent" (R. 70a).

2. *The Board's decision and order.*—Upon the foregoing facts, the Board (two members dissenting) found, in relevant part, that the Company “was not merely proposing its recognition and employee ballot clauses as matters which the Union could voluntarily accept or reject,” but that it “was adamantly insisting on the inclusion of these two clauses as a condition precedent to the execution of any agreement” (R. 478a). It concluded that such insistence was incompatible with the Company's bargaining obligation under the Act and constituted a refusal to bargain within the meaning of Section 8(a)(5) of the Act.

The Board held that “the Respondent's liability under Section 8(a)(5) turns not upon its good faith, but rather upon the legal question of whether the proposals are obligatory subjects of collective bargaining. For, if the proposals are permissible statutory demands, the Respondent was privileged to adamantly insist upon bargaining as to them and the Union could not refuse to so bargain; on the other hand, if they were not, the converse is true” (R. 478a). To hold otherwise, said the Board, “means, in effect, an amendment to the Act's statement of the required subject of collective bargaining and that [the Union is] required under the Act to bargain about matters wholly unrelated to wages, hours, and other conditions of employment” (R. 479a-480a).

Turning to the two clauses in question, the Board held that fulfillment of the duty “to accord exclusive and unequivocal recognition to the statutory representative \* \* \* is not a subject of obligatory bargaining,” and that the Company's recognition clause failed to accord such recognition since it was “in complete derogation of the certificate” which the Board had is-

sued only a few months earlier. Finding that the proposed recognition clause was a matter of substance, not merely one of language, and that the Company was insisting upon executing a contract with the Local to the exclusion of the International, the duly certified bargaining representative, the Board stated (R. 480a-481a):

The designation of representatives pursuant to a Board election, is the function of this Board. This agency, accordingly, designated and certified the bargaining agent in this case. A demand that the legal status thus obtained be bargained away cannot be countenanced if the purposes of the statute are to be realized. What has been won through the Board's election processes need not be re-won at the bargaining table.

The Board also held that the Company's proposed ballot clause, which in substance prohibited the Union from calling a strike or from amending, modifying, or terminating the agreement without the approval of a majority of the employees, both union and non-union, was not "an obligatory subject of collective bargaining," but rather a purely internal union matter unrelated to any condition of employment. In the Board's view, the ballot clause represented, in essence, an attempt to resolve economic differences by dealing with the employees as individuals contrary to the representative scheme which the Act has established for purposes of collective bargaining. The Board stated (R. 482a-485a):

In principle, there is little, if any, difference between an employer taking individual proposals directly to the employees and an employer requiring that the bargaining representative obtain ap-



proval or disapproval of any economic proposal as a condition precedent to the representative's exercise of statutory powers. Either situation is in derogation of the status of the statutory representative and thus violates the exclusive representation concept embodied in the Act.

Based upon the above findings and conclusions, the Board's order in relevant part directs the Company to cease and desist from insisting in bargaining negotiations upon its recognition and employee ballot proposals, or any other proposals not involving terms or conditions of employment. Affirmatively, the order directs the Company to bargain with the certified union upon request, and to post the usual notices (R. 487a-489a; 504a-506a).

3. *The Court of Appeals decision.*—In relevant part, the Court of Appeals upheld the Board's decision with respect to the Company's insistence upon its recognition clause, holding that representative status "is acquired by statute and is not within the area of collective bargaining" (R. 518a). More particularly, the court stated (R. 519a):

It is a strained construction of the Act to say that the party representing the employees and negotiating such a trade agreement for their benefit is not entitled to complete the job by having the contract which it has negotiated executed with it as the representative of the individual employees for whom it is acting. Such a contract is necessarily executed with a representative of the individual employees. We fail to see the reasoning which would authorize the substitution of the Local, not the official representative of the employees, for the Union which is the official representative of the employees, over the objec-

tion of the Union. The fact that the Union offered to share this right with its Local did not give the Company the right to insist that it relinquish the right completely.

The court disagreed, however, with the Board's decision regarding the ballot clause and set aside that part of the Board's order enjoining the Company from insisting in collective bargaining negotiations on such a clause. The court concluded that the ballot clause was a statutory subject of bargaining, insistence upon which was valid in the absence of bad faith. Noting that a no-strike clause is concededly within the area of compulsory bargaining, the court held that "the qualified no-strike proposal of the Company should not be classified differently" (R. 517a).

### **SUMMARY OF ARGUMENT**

1. The Act confers upon a representative designated or selected by a majority of the employees in an appropriate unit exclusive status as the bargaining representative of all the employees in the unit. The chosen representative is empowered to act for and bind every employee in the unit on all matters within the field of collective bargaining. Correlatively, an employer is under a duty to bargain collectively with the chosen representative of his employees and to treat with no other. "Bargaining carried on by the employer directly with the employees \* \* \*, who have not revoked their designation of a bargaining agent, would be subversive of the mode of collective bargaining which the statute has ordained \* \* \*. [O]rderly collective bargaining requires that the employer be not permitted to go behind the designated representatives, in order to bargain with the employees them-

selves, prior to such a revocation." *Medo Photo Corp. v. National Labor Relations Board*, 321 U.S. 678, 683-685.

The Company's ballot proposal, which in effect lodged in the employees effective control over the settlement of disputes within the area of collective bargaining and the utilization of strike sanctions, infringes upon the Union's exclusive status. It would enable the Company to go behind the Union and, in effect, deal with the employees themselves, for under the ballot clause the employees would make the very decisions which the Act contemplates as within the prerogative of the representative. To permit an employer to condition agreement upon such a clause would dilute the representative's authority, diffuse its responsibility, and ultimately dissipate its strength—in short, subvert the collective bargaining process. The only difference between this and *Medo Photo, supra*, is that the employees here would be replying to the Company's last offer at the ballot box rather than at the bargaining table.

It is without significance that the Company did not initially approach the employees directly but instead demanded of the bargaining representative itself to agree to qualify and surrender its exclusive statutory authority to settle disputes or to invoke strike sanctions. The vice is the same in both situations: the end result is to permit the employer to "go behind the designated representatives, in order to bargain with the employees themselves." *Medo Photo, supra*.

Neither the Company's freedom to propose the clause nor the Union's freedom to accept it justifies the Company's insistence upon the clause as the price of agreement. Since the area of compulsory bargain-

ing under the Act is restricted to "terms and conditions of employment", a party may not condition agreement upon matters outside that area. The ballot clause does not relate to terms or conditions of employment within the meaning of the Act. Instead, the right of a bargaining representative to full and exclusive recognition is a benefit conferred by law upon the representative, and, reciprocally, an obligation imposed upon the employer. The extinguishment of that benefit and the correlative obligation is not a subject-matter as to which the Union can be compelled to bargain. A contrary rule would, on the one hand, confer on the employer the option of bargaining concerning the representative's status which the Act establishes as a matter of right and, on the other hand, compel the representative to defend at the bargaining table what it has won through its victory at a Board election.

The absence of any proof of the Company's bad faith in proposing the ballot clause cannot excuse the Company's insistence upon the representative's surrender of a right or benefit conferred by the Act which the clause contemplated. Bad faith is the applicable yardstick where the issue is a term or condition of employment. It does not apply to matters outside the statutory area of compulsory bargaining, such as the right to full and exclusive recognition. This is the decisive distinction between the instant case and *National Labor Relations Board v. American National Insurance Co.*, 343 U.S. 395.

2. Similarly, as the court below held, the Company's insistence on the recognition clause denied the bargaining representative the status to which it was entitled under the Act. The clause would have sub-

stituted the Local for the International, which had been certified as the exclusive representative of the employees. The statutory requirement of "the signed agreement \* \* \* as the final step in the bargaining process" (*H. J. Heinz Co. v. National Labor Relations Board*, 311 U.S. 514, 525) cannot be satisfied by an agreement to which the certified representative, owed the duty of exclusive recognition and negotiation, is denied the status of a party over its objection. "The status is acquired by statute and is not within the area of collective bargaining" (R. 518a). The clause went far beyond mere matters of form and description of the parties to a collective bargaining agreement which are matters for negotiation; it struck at the very heart of the relationship between an employer and the bargaining representative which the Act envisages.

### ARGUMENT

#### **THE COMPANY'S INSISTENCE UPON ITS RECOGNITION AND BALLOT CLAUSES AS A CONDITION OF AGREEMENT CONSTITUTED A REFUSAL TO BARGAIN WITH THE UNION IN VIOLATION OF SECTION 8(a)(5) OF THE NATIONAL LABOR RELATIONS ACT**

Section 8(a)(5) of the National Labor Relations Act makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a)."<sup>5</sup> Section 9(a), in turn, declares that—

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay,

<sup>5</sup> Section 8(b)(3) imposes the correlative duty upon a labor organization which is the representative of the employees.



wages, hours of employment, or other conditions of employment \* \* \*.

Section 9(c) provides for elections to be conducted by the Board for the determination and certification of such majority representatives. Section 8(d) defines "to bargain collectively" as—

the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party \* \* \*.

Accordingly, where, as here, the Board has certified a majority representative, the conjunction of these provisions requires the employer to recognize and bargain with such representative, and "with no other", over the terms and conditions of employment. *National Labor Relations Board v. Jones & Laughlin Corp.*, 301 U.S. 1, 44. As explained in detail below, the Company, by its insistence on the recognition and ballot clauses as a condition of agreement, sought to compel the Union to surrender its statutory status and thereby deny it the exclusive recognition which the statute makes mandatory.

#### **A. The Ballot Clause Infringes Upon the Union's Exclusive Representative Status**

1. **Under the Act, the Duly Designated Bargaining Representative Is Entitled to Full and Exclusive Recognition as the Representative of All the Employees Whom It Represents**

The Act confers certain rights and duties on a labor organization designated, either through a Board-

conducted election or less formal procedures, as bargaining representative by the majority of the employees in an appropriate unit. Of primary importance in this connection is the representative's authority, in bargaining with the employer, to act for and bind all the employees in the unit, with a view to consummating a contract governing their working conditions. "Congress has seen fit to clothe [the chosen representative] with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents \* \* \*." *Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192, 202. "The National Labor Relations Act, as passed in 1935 and as amended in 1947," this Court has further observed, "exemplifies the faith of Congress in free collective bargaining between employers and their employees when conducted by freely and fairly chosen representatives \* \* \*. \* \* \* Any authority to negotiate derives its principal strength from a delegation to the negotiators of a discretion to make such concessions and accept such advantages as, in the light of all relevant considerations, they believe will best serve the interests of the parties represented." *Ford Motor Co. v. Huffman*, 345 U.S. 330, 337-338.

Such a collective bargaining system presupposes recognition by the employer of the power of the chosen labor representative to exercise its delegated authority to the exclusion of the individual employees. "The National Labor Relations Act makes it the duty of the employer to bargain collectively with the chosen representatives of his employees. That obligation being exclusive \* \* \* it exacts 'the negative duty to treat with

no other.' \* \* \* Bargaining carried on by the employer directly with the employees, whether a minority or majority, who have not revoked their designation of a bargaining agent, would be subversive of the mode of collective bargaining which the statute has ordained \* \* \*. \* \* \* But orderly collective bargaining requires that the employer be not permitted to go behind the designated representatives, in order to bargain with the employees themselves, prior to such a revocation." *Medo Photo Corp. v. National Labor Relations Board*, 321 U.S. 678, 683-685.

The representative system which the Act has thus adopted necessarily involves, as the Board pointed out (R. 482a), "trusting the agent with discretion not subject to review by those it represents as to each exercise thereof, particularly at the instance of an outside party."<sup>6</sup> The employees' designation of a collective bargaining representative would in great measure be futile and meaningless if an employer could at any particular stage of the bargaining procedure demand proof that the exclusive representative was acting in accordance with the desires of the employees. By the same token, "The purpose of the statute would be largely frustrated if the results of bargaining must be submitted to a vote of the employees, with all the misunderstandings and cross currents that would inevitably arise in an election of that sort. \* \* \* The statute contemplates the making of agreements by

<sup>6</sup> The accountability of the bargaining agent to those whom it represents for the proper exercise of its authority is, of course, another matter. "The bargaining representative, whoever it may be, is responsible to, and owes complete loyalty to, the interests of all whom it represents." *Ford Motor Co. v. Huffman*, *supra*, 345 U.S. at 338.

representatives of the employees, not by the employees themselves, 'giving statutory approval to the philosophy of bargaining as worked out in the labor movement in the United States.' " *National Labor Relations Board v. Darlington Veneer Co.*, 236 F. 2d 85, 88, 89 (C.A. 4). Accord: *National Labor Relations Board v. Corsicana Cotton Mills*, 178 F. 2d 344, 346-347 (C.A. 5).

The nature of the statutory scheme of representation is further underscored by this Court's decision in *Automobile Workers v. O'Brien*, 339 U.S. 454. In declaring invalid a state law requiring approval of a majority of the employees before a strike could be deemed lawful, the Court declared (at p. 458): "The federal Act \* \* \* does not require majority authorization for any strike. This requirement of approval by a majority of the employees was contained in the Bill which passed the House of Representatives; but the Act as finally adopted deliberately refrains from imposing the prerequisite of majority approval in each of its references to strike votes" (footnotes omitted).<sup>7</sup>

<sup>7</sup> The legislative history of the 1947 amendments to the Act sheds additional light on the statutory mechanism and the powers vested in the designated bargaining agent.

The committee hearings disclosed considerable concern over the alleged denial of the democratic rights of employees. *E. g.*: Hearings before the House Committee on Education and Labor on Bills to Amend and Repeal the National Labor Relations Act, and for other Purposes, 80th Cong., 1st Sess., pp. 23, 31, 493, 504, 505-506, 665; Hearings before the Senate Committee on Labor and Public Welfare on S. 55 and S. J. Res. 22, 80th Cong., 1st Sess., pp. 658-659, 1678-1679, 1826-1827, 2148. The report of the House Committee on Education and Labor listed as one of the evils to be corrected that the individual employee "has been denied any voice in arranging the terms of his own employment," and stated that its bill remedied this evil. H. Rep. No. 245, 80th Cong., 1st

In sum, the authority of the designated bargaining agent to speak for and bind those whom it represents with respect to matters falling within the area of collective bargaining is of a plenary character, and the statute does not envisage that the exercise of that au-

Sess., pp. 4, 7, reprinted in 1 Legislative History of the Labor Management Relations Act, 1947 ("Leg. Hist."), pp. 295, 298. The Declaration of Policy contained in the House Bill included as one of the objectives, "to encourage the peaceful settlement of labor disputes affecting commerce by giving the employees themselves a direct voice in the bargaining arrangements with their employers \* \* \* " H. R. 3020, 80th Cong., 1st Sess., Sec. 1(b), 1 Leg. Hist. 32. By way of implementing this declared policy, the House adopted a provision prohibiting in collective bargaining any strike called without the authorization of a majority of the employees by a vote on the employer's last offer. *Id.*, Sec. 2(11)(B)(vi)(h), 1 Leg. Hist. 39; H. Rep. No. 245, 80th Cong., 1st Sess., pp. 21-22, 69-70, 1 Leg. Hist. 312-313, 360-361. This limitation never found its way into the Act but "was rejected on the merits." *Automobile Workers v. O'Brien*, 339 U. S. 454, 458, n. 5. Instead, the House accepted as a substitute for this limitation the provision in Section 8(d) imposing certain conditions on the right to strike, none of which relates in any way to employee approval. See Statement of the Managers on the Part of the House, appended to H. Conference Report No. 510, pp. 30, 34-35, 1 Leg. Hist. 534, 538-539.

At the same time, Congress, in Title II of the Labor Management Relations Act, empowered the Director of the Federal Mediation and Conciliation Service, in mediation situations, to seek to induce the parties voluntarily to agree to a vote of the employees on the employer's last offer, providing, however, that a party's refusal to agree to such procedure "shall not be deemed a violation of any duty or obligation imposed by this Act." Sec. 203(c). Similarly, the strike ballot provided for national emergency disputes has no binding effect. Sec. 209(b).

The lone respect in which the Act required employee approval of the action of bargaining representatives was as to union-security agreements. And even this requirement, contained in Section 8 (a) (3), has since been repealed (65 Stat. 601).



thority be subject, at the employer's demand, to a referendum of the employees for approval or disapproval.

**2. The Ballot Clause Is in Derogation of the Bargaining Representative's Statutory Function**

Judged by the foregoing principles, the Company's ballot proposal constitutes "a violation of the essential principle of collective bargaining and an infringement of the Act \* \* \*." *Medo Photo, supra*, at p. 684.

The statutory requirement of full and exclusive recognition is not met where, as here, the employer refuses to accept the representative's determination of the employees' position on certain aspects of the employment relationship. In the final analysis, the ballot clause would enable the Company to deal with the employees themselves, rather than with their representative, with respect to every dispute, not subject to arbitration, arising under the agreement (as well as the termination and modification of the agreement) and with respect to the appropriate means of resolving those issues. Under the clause, it would not be the Union but the employees themselves who would pass upon the Company's offer. And under the clause, it would not be the Union but the employees themselves who would decide whether to strike in order to compel the Company to recede from its position. The proposal in question would, in effect, remove the bargaining representative from exercising any effective control either over the settlement of disputes within the area of collective bargaining or the utilization of strike sanctions.

Of course, it is not unusual for a bargaining representative to call for an employee vote on whether to accept an employer's proposal or to strike or not, but

this is a matter relating to the internal affairs of the representative *vis-a-vis* its constituency.<sup>8</sup> The statute does not, we submit, permit an employer to compel the bargaining representative to surrender, as the price of entering an agreement, the authority and discretion lodged in it by virtue of its exclusive representative status. To permit such a course would dilute the representative's authority, diffuse its responsibility, and ultimately dissipate its strength. In short, it would subvert the collective bargaining process.

It is of no moment that the Company did not initially approach the employees directly but instead demanded of the bargaining representative itself that it agree to qualify and surrender its statutory authority to settle disputes with the Company or to invoke strike sanctions by permitting the employees to make the ultimate decision. This does not cure the essential vice in the Company's insistence upon the proposal. The Company, in effect, sought to compel the Union to bargain over its right to full representative status, notwithstanding its statutory certification. The end result of the Union's yielding to such a demand would be to take effective control of the bargaining with respect to terms and conditions of employment and of strike sanctions out of the hands of the statutory representative and lodge it in the hands of the individual employees. Since under the Company's

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<sup>8</sup> See Peterson, *American Labor Unions* (1952) 155, 173. Over 40 percent of union constitutions which were the subject of two recent independent studies permit strikes to be called without membership approval. National Industrial Conference Board, *Unions' Strike Vote Provisions*, 16 *Management Record* 186, 188 (May 1954); U.S. Department of Labor, Bureau of Labor Statistics, *Strike-Control Provisions in Union Constitutions*, 77 *Monthly Labor Review* 497, 498. (May 1954).

proposal any impasse between the Company and the Union could have been resolved against the Union by vote of the individual employees, the Company was in effect insisting, like the employer in *Medo Photo*, that it "go behind the designated representatives, in order to bargain with the employees themselves." This it cannot do.<sup>9</sup>

To illustrate, let us assume that the Union rejects a Company offer of a small wage increase, demanding instead that the Company agree to certain other benefits less immediate but deemed of greater ultimate value, as, for example, a pension plan and seniority provisions. Under *Medo*, it is clear that the Company could neither approach the employees directly, nor even meet with them at their instance, for the purpose of securing acceptance of its offer. It would certainly be inconsistent with this result to hold that the Company could insist upon accomplishing this same purpose through the medium of an employee ballot on whether to accept or reject the Company's offer. The only distinction between this and *Medo* is that here the employees would be replying to the Company's offer at the ballot box rather than across the bargaining table—a distinction wholly without substance. The evil condemned in *Medo* is not avoided by the device of using

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<sup>9</sup> The court below held *Medo* distinguishable on the ground that here "Any requirement that the employees approve the action of the Union would be the result of an agreement with the Union to that effect" (R. 517a-518a). This however, would be true of any condition the employer sought to impose, including one that the contract not be in writing. Indeed, this reasoning is equally applicable to the recognition clause which, the court held, could not be forced upon the Union.

the Union as a mere conduit—or messenger—between the Company and its employees.

**3. The Ballot Clause Is Not a Term or Condition of Employment Within the Meaning of the Act and Hence Is Not Within the Area of Compulsory Bargaining**

The Company asserts, however, that if, as the Board recognized, it is not unlawful for an employer to *make* such a proposal and for a union to accept it, then there is no basis for concluding that an employer may not *insist*, even over the union's objection, upon the proposal as a condition of agreement, just as the employer acting in good faith may adhere to his position with respect to terms and conditions of employment. But, as the Board also pointed out (R. 479a), "we are here concerned not with what the parties might do by mutual consent beyond the obligatory mandate of the statute, but with what the obligation to bargain under the Act requires the parties to do." That statutory obligation is defined as "the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached \* \* \*." Sec. 8(d); see also Sec. 9(a). The statute thus defines an area of compulsory bargaining, with both the right and the obligation to bargain collectively extending to every matter within that area. As to subject matter within that defined area—wages, hours and conditions of employment—the parties may insist upon bargaining collectively and, as long as they are acting in good

faith, neither of them is required to agree to a proposal or make concessions. In the absence of bad faith, either party may properly condition agreement upon a matter relating to terms and conditions of employment. See *National Labor Relations Board v. American National Ins. Co.*, 343 U.S. 395, 407-409. On the other hand, as the courts have uniformly held, a party may not condition agreement upon a matter outside that area.

A few examples will serve to illustrate this point. Thus, even before Section 8(d) specifically incorporated the requirement of a signed, written contract into the bargaining duty, a party's refusal to execute a written contract breached its duty, notwithstanding the fact that it was free to propose an oral contract and the other party was free to enter into one. *H. J. Heinz Co. v. National Labor Relations Board*, 311 U.S. 514. Similarly, an employer may propose, and the parties may agree, that a union register under a state statute so as to become suable as an entity, but he may not condition agreement upon such proposal. *National Labor Relations Board v. Dalton Telephone Co.*, 187 F. 2d 811 (C.A. 5), certiorari denied, 342 U.S. 824. Nor may the employer condition agreement upon the union's promise to organize his competitors, although he may propose this to the union and the latter may voluntarily accept the undertaking. *National Labor Relations Board v. George P. Pilling & Son Co.*, 119 F. 2d 32, 38 (C.A. 3). Or, as the Board pointed out, "a union might propose that an employer reduce the salaries of its officers as a means of obtaining wage increases for employees, and the employer may voluntarily agree, but it does not follow that the employer is required to bargain about such a matter" (R. 479a).



In applying this principle to a ballot clause similar to the clause involved here, the Fourth Circuit stated in *National Labor Relations Board v. Darlington Veneer Co.*, 236 F. 2d 85, 88, 89, that while "the mere advancing of such proposals is [not] of itself an unfair labor practice," "the insistence upon such provisions as a condition of entering into any agreement is so unreasonable when objected to by the other party as to furnish of itself a sufficient basis for the finding by the Board of failure to bargain in good faith" because "[i]t is well settled that an employer may not insist upon including as a condition of the contract terms having no relation to the statutory duty to bargain."<sup>10</sup> If the rule were otherwise, a party's right to insist on matters other than terms or conditions of employment would entail a reciprocal duty upon the other party to bargain thereon, with the consequence that the

<sup>10</sup> See also *Eppinger & Russell Co.*, 56 NLRB 1259 (cited with approval in *Hill v. Florida*, 325 U.S. 538, 542) (insistence that union obtain Florida license); *Hartsell Mills Co. v. National Labor Relations Board*, 111 F. 2d 291, 292 (C.A. 4) (employer's insistence that union withdraw pending charges); *National Labor Relations Board v. H. G. Hill Stores*, 140 F. 2d 924, 925-926 (C.A. 5) (same); *American Laundry Machinery Co. v. National Labor Relations Board*, 174 F. 2d 124 (C.A. 6), enforcing 76 NLRB 981, 982-983 (same); *Lion Oil Co. v. National Labor Relations Board*, (C.A. 8), 40 LRRM 2193 (same); *National Labor Relations Board v. Louisville Refining Co.*, 102 F. 2d 678, 680-681 (C.A. 6), certiorari denied, 308 U.S. 568 (insistence that union bargain through a local); *National Labor Relations Board v. Aldora Mills*, 180 F. 2d 580 (C.A. 5), enforcing 79 NLRB 1, 2 (same); *National Labor Relations Board v. Taormina Co.*, 207 F. 2d 251, 254 (C.A. 5) (insistence that union secure consent of parent federation); *National Labor Relations Board v. Griswold Mfg. Co.*, 106 F. 2d 713, 719 (C.A. 3) (insistence that union's name be omitted from agreement).

latter's refusal to consider or discuss the matter would violate the statute.

The Company's ballot clause does not relate to terms or conditions of employment within the area of compulsory bargaining as defined by the Act. The right of a bargaining representative to exclusive recognition, with all that it implies, is not itself a term or condition of employment but is, rather, a benefit conferred by law upon the representative and, reciprocally, an obligation imposed upon the employer. The Company's insistence that any agreement arrived at with the Union must contain the ballot clause in effect sought to compel the union to surrender that benefit and relieve the employer of the corresponding statutory obligation. Plainly, the extinguishment of that benefit and correlative duty is not a subject matter as to which the Union can be compelled to bargain. If, as here, the employer may condition agreement upon the Union's waiver of its statutory right to full recognition as the exclusive representative of all the employees in the unit, this is tantamount to conferring upon the employer the option of bargaining concerning the Union's status which the Act establishes as a matter of right. Cf. *McQuay-Norris Mfg. Co. v. National Labor Relations Board*, 116 F. 2d 748, 751 (C.A. 7), certiorari denied, 313 U.S. 565. And, by the same token, the Union is compelled to defend and regain at the bargaining table what it won through its victory at the Board election. Such a conclusion is manifestly at odds with the statutory scheme. The fact that unions, including the one involved in this case, may have on occasion accepted similar ballot proposals does not lessen the force of this argument. A duly designated bargaining agent may not lack capacity to

waive some of its statutory prerogatives. But it is the representative which has that option; the employer cannot, by refusing to bargain further, compel the representative to make such a waiver.

The court below (R. 517a), regarding the ballot proposal as a "qualified no-strike proposal," concluded that it "should not be classified differently" from a no-strike proposal, which the Board acknowledged to be within the statutory bargaining area. Couched in these terms, there is, to be sure, as the Board itself noted (R. 483a), "some appeal in the argument that a strike ballot proposal should also be an obligatory subject [of collective bargaining] as it is less restrictive than a no-strike clause." The argument, however, overlooks the decisive distinction that one proposal seeks to circumvent the exclusive status of the bargaining representative, while the other does not. As the Board explained (R. 484a):

A no-strike clause involves the employees' right to strike. By virtue of the designation of a statutory bargaining representative, the exercise of this right is entrusted to the representative which has the power to waive it in a contract as a *quid pro quo* and in the interest of industrial harmony. However, the strike ballot clause here, while incidentally limiting the individual's right to strike, is primarily concerned with the mechanics of testing the statutory representative's power to call a strike or to terminate or amend the contract during its term—a purely internal matter unrelated to any condition of employment. Indeed, the strike ballot clause is in essence a procedure designed to force all the employees in the unit, as individuals, to pass upon the [Company's] last offer.

Stated otherwise, although a union can generally be compelled to bargain concerning the relationship of the union (or the employees) *vis-a-vis* the employer (*e.g.*, when the strike weapon should be used), the union cannot be compelled to bargain concerning the relationship of the union *vis-a-vis* the employees (*e.g.*, what intra-union procedures should be used in determining when the strike weapon should be used). As to the latter relationship, the only compulsion that can be exercised against the union (apart from the will of its members) is the force of the underlying statute—not the force of employer bargaining power.

**4. The Company's Good Faith Cannot Excuse Its Infringement of the Union's Exclusive Representative Status**

Finally, relying on this Court's decision in *National Labor Relations Board v. American National Insurance Co.*, 343 U.S. 395, the Company asserts that the ballot proposal was advanced in good faith to protect the employees against the possibility of "unwarranted strikes" (*supra*, p. 7) and that "Congress measured the duty of an employer under Section 8(a)(5) by his good faith and by no other yardstick \* \* \*" (Company's br. in opp. to Board's petition for certiorari, p. 16).

Initially, the union's accountability to those whom it represents is not a matter falling in the area of compulsory bargaining in which the employer has a legally cognizable interest. Here, as in *Brooks v. National Labor Relations Board*, 348 U.S. 96, 103, the employer, in effect, "seeks to vindicate the rights of his employees." Just as in that case the employer could not, in reliance upon the employees' rights, defeat the statutory obligation to bargain collectively with the duly designated representative, so here the Company

may not escape its obligation to accord the representative full and exclusive recognition on the basis of possible dereliction by the representative in the duty which it owes to those whom it represents. "The underlying purpose of this statute is industrial peace. To allow employers to rely on employees' rights in refusing to bargain with the formally designated union is not conducive to that end, it is inimical to it." *Brooks, supra*, at p. 103. The employees themselves are not powerless to make the representative responsive to their legitimate interests. The representative is under an enforceable statutory obligation to make "an honest effort to serve the interests" of all whom it represents and "is responsible to, and owes complete loyalty to" those interests. *Ford Motor Co. v. Huffman*, 345 U.S. 330, 337-338. See also *Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192, 201-202. The Board itself, in exercising its power to determine and certify bargaining representatives under Section 9 of the Act, has asserted its correlative power to police and revoke certifications in the face of various forms of conduct held incompatible with the representatives' duties. *Hughes Tool Co.*, 104 NLRB 318; National Labor Relations Board, Eighteenth Annual Report, 1953 (Govt. Print. Off. 1954), pp. 19-20. And finally, the employees in the unit, like an electorate, have it within their power to vote the representative out of office. *Brooks, supra*.

In any event, this Court's decision in *American National Insurance, supra*, affords no support for the Company's position. The controlling difference between the two cases is that in *American National* the so-called management functions clause, as the Court saw it and repeatedly emphasized (343 U.S. at pp. 400,



405, 407, 409), did relate to terms and conditions of employment, while the ballot clause in the instant case, as we have demonstrated, does *not* relate to terms and conditions of employment but to a right which the Act vests in the designated bargaining representative. The propriety of an employer's refusal to accord to a bargaining representative the status to which it is entitled as a matter of right cannot be measured in terms of the employer's good faith.

Thus, for example, an employer who, through appropriate procedures available to him under the Act, is challenging the representative status of the certified bargaining agent cannot rely upon his good faith to excuse unilateral action with respect to terms and conditions of employment in derogation of the union's status. *May Stores Co. v. National Labor Relations Board*, 326 U.S. 376, 383-384. Nor can an employer who has arrived at an accord with the representative of the employees covering terms and conditions of employment be heard to say that his good faith relieves him of the statutory duty to memorialize it in a written document. *H. J. Heinz Co. v. National Labor Relations Board*, 311 U.S. 514, 525-526. Nor can an employer's good faith justify his insistence upon recognizing the certified representative merely as the bargaining agent of only its members rather than of all the employees, union or non-union, in the appropriate unit. *McQuay-Norris Mfg. Co. v. National Labor Relations Board*. 116 F. 2d 748, 751 (C.A. 7), certiorari denied, 313 U.S. 565. Again, to illustrate further, an employer cannot refuse to bargain collectively over such matters as pension plans or employee stock purchase plans because he in good faith believes that these are not matters relating to terms or conditions

of employment. *Inland Steel Co. v. National Labor Relations Board*, 170 F. 2d 247 (C.A. 7), certiorari denied, 336 U.S. 960; *Richfield Oil Corp. v. National Labor Relations Board*, 231 F. 2d 717 (C.A.D.C.), certiorari denied, 351 U.S. 909. Indeed, in *American National* itself, the Court implicitly recognized that the employer's good faith would not have excused his refusal "to bargain over an issue on the erroneous theory that, as a matter of law, such an issue did not involve a 'condition of employment' within the meaning of the Act." 343 U.S. at p. 407, n. 20.

The short of the matter is that the employer's good faith cannot excuse his refusal to accord to his employees or their representative the rights and benefits which the Act confers upon them. Accordingly, if, as we think, the Company's ballot proposal constituted an infringement of the bargaining representative's statutory right to full and exclusive recognition, the Company cannot escape the sanctions of the statute merely because it may have been acting in good faith.<sup>11</sup>

<sup>11</sup> As noted above, p. 9, the Union ultimately capitulated to the Company's demands concerning the ballot and recognition clauses and an agreement containing those provisions was executed. This settlement, to which the employees succumbed as a result of the Company's unyielding insistence, in no way changes whatever legal consequences attached to the conduct prior to the settlement. As was held in *McQuay-Norris Mfg. Co. v. National Labor Relations Board*, 116 F. 2d 748, 751 (C.A. 7), certiorari denied, 313 U.S. 565, "it could mean nothing more than that the Union, after engaging in a controversy for more than a year regarding its right to complete recognition, consented to accept the most it could obtain of a right to which it was entitled for the asking. A consent given under such circumstances can not be utilized by petitioner to relieve it of its statutory duty to grant complete recognition." Cf. *National Labor Relations Board v. Yawman & Erbe Mfg. Co.*, 187 F. 2d 947, 949 (C.A. 2); *Dickey v. National Labor Relations Board*, 217 F. 2d 652, 655 (C.A. 6).

## **B. The Recognition Clause Also Infringes Upon the Union's Exclusive Representative Status**

As shown above, pp. 6-9, the Company insisted, over the Union's strenuous objections, that any agreement arrived at in the negotiations should be incorporated in a contract between the Company and the Local and that the Local be named as the exclusive bargaining agent of the employees, instead of the Union which the Board had certified. The Union ultimately yielded, and the contract which was executed embodied the Company's proposals.

The considerations which apply to the ballot clause and render the Company's insistence upon that proposal violative of the Act (*supra*, pp. 17-33) apply also to its insistence upon the recognition clause. The latter clause, like the former, was in derogation of the Union's representative status which the Board certification formally established and, as the court below correctly concluded (R. 518a), in finding that the Company's insistence upon the recognition clause was unlawful, "This status is acquired by statute and is not within the area of collective bargaining."<sup>12</sup>

It is settled law that a union duly designated as the bargaining representative is entitled not only to exclusive and unequivocal recognition as such representative but also to have any collective bargaining agreement incorporated in a contract signed by the parties and to administer the contract on behalf of the employees whom it represents. Sec. 8(d); *H. J.*

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<sup>12</sup> The different results which the court below reached with respect to the two clauses stemmed, we think, from its failure to perceive that both proposals impinged upon, and were in derogation of, the Union's statutory status which the court below acknowledged was not a bargainable matter.

*Heinz Co. v. National Labor Relations Board*, 311 U.S. 514, 525; *Ford Motor Co. v. Huffman*, 345 U.S. 330. The statutory requirement of "the signed agreement \* \* \* as the final step in the bargaining process" (*Heinz, supra*, at p. 525) cannot be satisfied by an agreement to which the certified representative, owed the duty of exclusive recognition and negotiation, is denied the status of a party over its objection. It bears emphasis that such a demand, like the ballot clause, means that the union must lay on the bargaining table the status which its victory at the Board-conducted election has gained for it as a matter of right. The statute clearly does not countenance such an incongruous result. As the court below observed (R. 519a), "It is a strained construction of the Act to say that the party representing the employees and negotiating [the collective bargaining] agreement for their benefit is not entitled to complete the job by having the contract which it has negotiated executed with it as the representative of the individual employees for whom it is acting."

The instant case does not differ essentially from *Douds v. International Longshoremen's Association*, 241 F. 2d 278 (C.A. 2), where the representative insisted over the employer's objection on bargaining with respect to a different unit of employees from the one certified by the Board as appropriate. Holding that the union's insistence was violative of the Act, the Second Circuit stated, in language which fits the Company's refusal to accord to the Union the recognition to which it was entitled under the Board's certification (241 F. 2d at 282, 283):

This distinction between private bargaining over conditions of employment and administra-

tive determination of the unit appropriate for bargaining is clear. The parties cannot bargain meaningfully about wages or hours or conditions of employment unless they know the unit of bargaining. That question is for the Board to decide on a petition under Section 9(c) of the Act, and its decision is conclusive on the parties, cf. *Brown*, for and on behalf of *National Labor Relations Board v. Pacific Tel. & Tel. Co.*, 9 Cir., 218 F. 2d 542, 544, although the decision may subsequently be changed.

\* \* \* \* \*

The process of change not permitted by the Act is one that denies the Board this ultimate control of the bargaining unit and disrupts the bargaining process itself. This is precisely what occurs when, after the Board has decided what the appropriate bargaining unit is, one party over the objection of the other demands a change in that unit. Such a demand interferes with the required bargaining "with respect to rates of pay, wages, hours and conditions of employment" in a manner excluded by the Act. It is thus a refusal to bargain in good faith within the meaning of Section 8(b)(3).<sup>13</sup>

The Company asserts, however, that since the statutory duty to bargain collectively extends to "the nego-

<sup>13</sup> Accord, *National Labor Relations Board v. Retail Clerk's Int'l Ass'n*, 203 F. 2d 165, 169-170 (C.A. 9); cf. *National Labor Relations Board v. Taormina Co.*, 207 F. 2d 251, 254 (C.A. 5); *McQuay-Norris Mfg. Co. v. National Labor Relations Board*, 116 F. 2d 748, 751, 752 (C.A. 7), certiorari denied, 313 U.S. 565; *National Labor Relations Board v. Griswold Mfg. Co.*, 106 F. 2d 713, 719 (C.A. 3); *National Labor Relations Board v. Louisville Refining Co.*, 102 F. 2d 678, 680-681 (C.A. 6), certiorari denied, 308 U.S. 568; *National Labor Relations Board v. Pecheur Lozenge Co.*, 209 F. 2d 393, 403 (C.A. 2), certiorari denied, 347 U.S. 953.



tiation of an agreement" (Sec. 8(d)), then "the form the contract should take and how the parties to it should be described" are bargainable issues (Cross-Pet. 15-16). But it seems too plain for argument that the recognition clause on which the Company successfully insisted was not a mere matter of form or description of the parties to the contract. It was, rather, as the court below correctly stated (R. 519a), "the substitution of the Local, not the official representative of the employees, for the Union, which is the official representative of the employees, over the objection of the Union."

Nor can the basic significance of the recognition clause be obscured by the Company's contention that the difference between the respective recognition clauses proposed by it and the Union was "simply one of emphasis" (Cross-Pet. 15, 16). The Union's proposal, as the Board found (R. 481a), merely included "the Local as a co-party to the contract \* \* \*." This is not an uncommon practice and, moreover, the Company was as free to reject the proposal as the Union to make it. But, the Company's proposal, as the Board also found with the approval of the court below (R. 481a), went to the heart of the relationship between an employer and the bargaining representative which the Act contemplates. The Company "adamantly refused to sign any agreement which even included the certified representative as a party thereto," and the purpose of the clause was to substitute the Local for the Union as the exclusive bargaining representative of the employees. It is no answer to say, as does the Company (Cross-Pet. 16-19), that it negotiated the contract with the certified representative and that its insistence on the recognition clause

was merely to enable the Local, which allegedly had greater familiarity with the immediate plant problems, to administer the contract. The administration of a collective bargaining agreement, no less than its consummation, is the prerogative of the duly designated representative of the employees. *Ford Motor Co. v. Huffman*, 345 U.S. 330, 337-338; *Order of Railroad Telegraphers v. Ry. Express Agency*, 321 U.S. 342, 346-347; cf. *Brooks v. National Labor Relations Board*, 348 U.S. 96. And, as the court below pointed out (R. 519a), "the fact that the Union offered to share the right with its Local did not give the Company the right to insist that it relinquish the right completely."

### CONCLUSION

For the reasons stated, the judgment of the court below in No. 53 should be reversed and the cause remanded with direction to enforce the Board's order, and the judgment in No. 78 should be affirmed.

Respectfully submitted.

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Office - Supreme Court, U.S.

FILED

FEB 8 1957

JOHN T. FEY, Clerk

# In the Supreme Court of the United States

OCTOBER TERM, 1956

No. ~~62~~ 53

NATIONAL LABOR RELATIONS BOARD,

*Petitioner,*

v.

WOOSTER DIVISION OF BORG-WARNER CORPORATION,

*Respondent.*

## BRIEF OF RESPONDENT

In Opposition to Petition for Writ of Certiorari.

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# In the Supreme Court of the United States

OCTOBER TERM, 1956.

No. 622.

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NATIONAL LABOR RELATIONS BOARD,

*Petitioner,*

v.

WOOSTER DIVISION OF BORG-WARNER CORPORATION,

*Respondent.*

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## BRIEF OF RESPONDENT

**In Opposition to Petition for Writ of Certiorari.**

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### INTRODUCTORY STATEMENT.

The Solicitor General, on behalf of the National Labor Relations Board, has petitioned this Court to issue a Writ of Certiorari to review the decision of the United States Court of Appeals for the Sixth Circuit, issued in the above entitled case on September 12, 1956, to the extent that it denied enforcement of an order issued by the National Labor Relations Board.

The question involves a charge by the Board that the good faith insistence by the respondent during the course of collective bargaining upon a *counter-proposal* to a Union demand, as a condition precedent to the execution of an agreement covering wages, hours and other terms and conditions of employment, constituted *per se* a refusal to bargain. The Board contends that those matters properly included in the words "wages, hours and other terms and conditions of employment" are susceptible of determination as a matter of law by some *per se* test of illegality, rather than as a result of the good faith bargaining of the

parties as prescribed by this Court in *National Labor Relations Board v. American National Insurance Co.*, 343 U. S. 395.

In order fairly to evaluate the question it is necessary that this Court have before it a more complete statement of the facts than is contained in the Petition of the Solicitor General.

#### **ADDITIONAL STATEMENT OF FACTS.**

- 1. It Is Conceded That in the Advancement of Its Counter-Proposals and in All Other Respects Respondent Acted in Good Faith in Fact Throughout Period of Bargaining Involved.**

Both in the hearing before the Trial Examiner and in oral argument before the full Board, the general counsel freely conceded that at all times during the bargaining the respondent had acted in good faith in fact, and no claim to the contrary was ever asserted. This was recognized by the Trial Examiner (R. 389a), both the majority (R. 478a) and the minority (R. 490a) of the Board, and the Court of Appeals (p. 24 of Board's Petition). The majority of the Board determined that respondent's liability "turns not upon its good faith but rather upon the legal question of whether the proposals are obligatory subjects of collective bargaining" (R. 478a); or, as paraphrased by the Court of Appeals, "the Company's insistence upon them to the point of impasse, *even though in good faith*, made the action *illegal per se*" (p. 24, Board's Petition, emphasis supplied).

## 2. The Counter-Proposal Involved.

The counter-proposal complained of by the Board involved the effort by respondent to obtain *Union agreement* to a limited, no-strike clause which sought, not an absolute ban upon strikes, but only a provision that before a strike should be called it should receive the approval, by ballot, of a majority of the employees in the bargaining unit. The Court of Appeals held that the respondent could properly make this counter-proposal a condition precedent to agreement.

Another counter-proposal involved was that the bargaining agent, identified in the Board's certification as "International Union, United Automobile, etc. Workers of America (C. I. O.)," should agree to describe itself in the preamble to the proposed collective bargaining agreement and execute said agreement as "Local Union 1239, International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (U. A. W.-C. I. O.)." (R. 565a-566a.) At the time of the election and certification the Union had not chartered its Local, but before the bargaining commenced the Union's Local No. 1239 was chartered. The *first Union proposals* to which respondent's counter-proposals were made were handed to respondent *by the Union's Local president*, and were denominated as "*Proposal of Local 1239, U. A. W. C. I. O., to Wooster Division of Borg-Warner Corporation*" (R. 154a, 240a; G. C. Ex. 4, p. 8 and Schedule). Ultimately, and after bargaining, the Union and respondent reduced their respective proposals and counter-proposals for the description of the Union in the contract to a matter of emphasis: the Union reducing its proposal to "United Automobile, etc. Workers of America, Local Union No. 1239," and respondent reducing its to "Local Union No. 1239, United Automobile, etc. Workers of America."

On this point the Court of Appeals concurred in the view of the majority of the Board that respondent's continued support of this last counter-proposal constituted *per se* an illegal withholding of recognition of the Union as the exclusive bargaining representative of respondent's employees. As the decision of the Court of Appeals was favorable to it on this point, the Board does not seek to review this aspect of the decision. As the questions raised by the two counter-proposals are of equal significance in the administration of the Act, respondent, concurrently with the filing of this Brief in Opposition, is filing a Cross-petition for a Writ of Certiorari with respect to the decision of the Court of Appeals on this point, seeking a review of this part of the decision of the Court below if this Court should grant the Board's petition involved here.

**3. Throughout the Bargaining Involved the Respondent at All Times Recognized, and Met and Conferred With the Union as the Exclusive Bargaining Representative of Respondent's Employees.**

There is no claim that the respondent at any time failed, *in fact*, to comply with the requirements of Section 8(d) of the Act "to meet at reasonable times and confer in good faith" with the Union "with respect to wages, hours and other terms and conditions of employment." Nor is there any claim that, *in fact*, the respondent failed at any time to recognize the Union for such purposes as "the exclusive representatives of all the employees" as required by Section 9(a) of the Act.

In the bargaining respondent recognized, met and conferred with the Union's Local representatives and officers, its International representatives, one of its Regional Directors, an Administrative Assistant, its Publicity Director, and an official of its Borg-Warner council (R.



152a, 153a). The facts fully support the finding of the Court of Appeals that "there was no attempt to bargain with the employees instead of the designated representatives. The Union was at all times recognized as the exclusive representative of the employees. The bargaining was done with it, not with the employees. Any requirement \* \* \* would be the result of an agreement with the Union to that effect" (p. 26, Board's Brief, emphasis supplied).

**4. Prior to the Commencement of Negotiations the Union Had Agreed to Similar No-strike Proposals in Other Labor Contracts.**

The particular Union here involved had long recognized the subject matter of respondent's counter-proposal as proper for inclusion in collective bargaining contracts. It had repeatedly included similar no-strike provisions, with employee balloting requirements, of the character contained in respondent's counter-proposal, in its labor contracts with other employers (R. 378a, 381a).

The record further discloses that the same type of limited no-strike provision with employee balloting requirements had been the subject of bargaining and acceptance by other well established and experienced labor Unions in their labor agreements (R. 382a).

**5. The Trial Examiner, the General Counsel, the Board Majority, and Minority, and the Court of Appeals, All Recognized That Respondent's Counter-Proposal Was Legal to Make, Legal to Accept, and Legal to Include in a Collectively Bargained Labor Contract.**

The trial examiner specifically held "that submission of the Company's proposals did not violate the Act" (R. 431a), and that they could be "adopted if assented to"

(R. 430a). The general counsel stated that he did "not contend that those propositions were matters that could not be proposed by the Company or that they were matters that the Union could not agree" to. (p. 18, Report of oral argument before the Board.) The majority of the Board recognized "that the respondent could make these proposals"; that they were "not in conflict with the provisions of the Act," and that the Union was entirely free to agree to the proposals (R. 479a). Recognition of the validity of this proposition is, of course, implicit in the decision of the Court of Appeals that respondent was not guilty of a failure to bargain with respect to the limited no-strike clause.

The opinion of the two dissenting members of the Board recognized the logical impossibility and complete impracticality of the Board's position that a proposal legal to make, legal to accept and legal to include in a contract could, at some time in the course of bargaining conducted in admitted good faith, become illegal according to some obscure *per se* test, saying:

"This, I think, is tantamount to holding that the Respondent had no right to put these proposals on the bargaining table, a position not espoused by the General Counsel or adopted by the Trial Examiner. \* \* \* To say that a party has no right to 'bargain' about a bargainable issue is a contradiction in terms which adds confusion rather than clarity to the ground rules of collective bargaining." (R. 493a.)

**6. At the Direction of the Union's International Executive Board, a Labor Contract With Respondent Was Ultimately Agreed to and Signed on Behalf of the Union.**

The ultimate execution of a collective bargaining agreement not only was consented to but was directed by the International. At page 8 of the Board's Petition it states that on May 5 the bargaining representatives' Local entered into a collective bargaining agreement with the respondent "with the tacit consent of the International." The fact is that the execution of the agreement was originally conceived and specifically directed by the International. This agreement contained the last counterproposal of the respondent for a no-strike clause.

Four or five of the Union's International representatives summoned local representatives and directed them "to recommend to the membership \* \* \* that we end the strike and go back to work" (R. 364a). The Union's Local president opposed this action (R. 364a), and the Union's Local representatives "didn't have any intention of going in and talking to the Company until the International called us \* \* \* and asked us to talk the membership into going back to work" (R. 365a). Before the contract was signed it was approved by the Executive Board of the International Union in Detroit (R. 362a, 363a, 375a).

**ARGUMENT.**

The opinion of the majority of the Board and the Board's Petition in this Court depend for their support upon two hypotheses, both of which are false. They are:

(a) That the scope and subject matter of collective bargaining under the Act are susceptible of limitation, as a matter of law, to particular bargaining subjects, by the application of a *per se* test of legality or illegality, and

(b) That respondent's advancement and continued support of its counter-proposals, seeking *Union agreement* to limitations upon the right of respondent's employees to strike, was illegal *per se*, because included in *such agreement* was a provision permitting a ballot of the employees before a strike should actually be called.

On the counter-proposal involved in the Board's Petition the Court of Appeals did not reach the first of such questions. Rather, it determined that the subject matter of the counter-proposal, limiting the right to strike, was clearly one involving wages, hours, or other conditions of employment and, therefore, subject to unrestricted bargaining by the parties.

**A. The Decision Below is Consistent With the Decision of the Court of Appeals for the Seventh Circuit in the Allis-Chalmers Case, the Only Other Decision of a Court of Appeals on the Point.**

In *Allis-Chalmers Mfg. Co. v. National Labor Relations Board*, 213 F. 2d 374, the Court of Appeals for the Seventh Circuit considered the right of an employer to bargain collectively for a limited no-strike clause, substantially identical in language to that involved in respond-

ent's counter-proposal. The Seventh Circuit reached a conclusion identical with that of the Court below.

These two decisions are the *only* decisions in which Courts of Appeals have passed upon the question. They concur in the conclusions that such a counter-proposal is one with respect to wages, hours and conditions of employment, and that *seeking Union agreement* to an employee ballot, under such circumstances, in no way derogates the Union's representative status. A very brief reference to the opinions themselves will illustrate.

**1. The counter-proposal dealt with conditions of employment.**

"The phrase 'conditions of employment,' for example, has not yet acquired precise definition." (213 F. 2d 374 at 377). "The bargaining area of the Act has no well defined boundaries; the phrase 'conditions of employment' has not acquired a hardened and precise meaning \* \* \*. The area of compulsory collective bargaining is obviously an expanding one." (p. 25, Board's Petition).

"We start with the conceded premise that a proposal for a non-strike clause is \* \* \* within the area of collective bargaining \* \* \*. That they \* \* \* have a right through their duly certified bargaining representative \* \* \* to waive such right must be inherent in the concession that a no-strike clause is statutory." (213 F. 2d 374 at 378). "\* \* \* The Board concedes that a no-strike clause is within the area. \* \* \* The qualified no-strike proposal of the Company should not be classified differently." (p. 25, Board's Petition).

**2. The counter-proposal, since it sought only Union agreement, did not derogate the Union's status as the employees' exclusive bargaining agent.**

"Neither do we think that the present proposal constitutes an effort by the Company 'to dictate to



the employees and their chosen bargaining representative, the mechanics to be utilized in determining whether to go out on strike' different from that which could be ascribed to the no-strike clause. \* \* \* True, there may be a difference in the two situations. Such difference, however, does not affect the right of the employer to propose and to insist on bargaining; it may affect the decision of the Union as to whether it will accept or refuse the proposal." (213 F. 2d 374 at 378, emphasis supplied.)

"In the present case there was no attempt to bargain with the employees instead of the designated representatives. The Union was at all times recognized as the exclusive representative of the employees; the bargaining was done with it, not with the employees. Any requirement that the employees approve the action of the Union would be the result of an agreement with the Union to that effect." (p. 26, Board's Petition, emphasis supplied.)

**B. The Decision Below Does Not Conflict, But Is Consistent With the Decisions of the Courts of Appeal for the Fourth and Fifth Circuits.**

Petitioner contends that the decision below cannot be reconciled with the decision of the Fourth Circuit in *National Labor Relations Board v. Darlington Veneer Co.*, 236 F. 2d 85, and that of the Fifth Circuit in *National Labor Relations Board v. Corsicana Cotton Mills*, 178 F. 2d 344. In fact, the decision below conflicts with neither and is consistent with both.

The decisions in *Darlington Veneer* and *Corsicana Cotton Mills* are both clearly distinguishable from the decision of the Court below and the Court below was correct in so holding.

At no time in the instant case did respondent ever seek to meet, confer or otherwise bargain or negotiate

directly with its employees. At no time did it ever suggest or propose that any collective bargaining agreement which might result from the negotiations should have validity only if ratified by the employees. At all times respondent's negotiations were only with the Union. All such negotiations, including the counter-proposals involved, looked toward agreement *only with the Union*. No agreement or ratification of a Union agreement with respect to such counter-proposals was ever sought or suggested. The Union was at all times free to reject the counter-proposals. They could have life only in the event of Union acquiescence.

In *Darlington Veneer* the employer refused to accept Union agreement to a contract as binding upon the employees, but rather required that the contract negotiated should be "effective \* \* \* only after ratification by the employees." (236 F. 2d 85 at 87). Similarly, in *Corsicana Cotton Mills*, the employer urged a contract provision "to the effect that non-Union employees *should have a right to vote upon the provisions of the contract negotiated by the Union as bargaining agent.*" (178 F. 2d 344 at 345).

Acceptance of the employer's position in either *Darlington Veneer* or *Corsicana Cotton Mills* would have reduced the Union to a mere messenger, with its powers limited to *recommending* to the employees terms and conditions of employment. Under such provisions *the power of agreement* was confined to the employees, *to the exclusion* of the bargaining agent. The clause proposed in *Darlington Veneer* for automatic nullification of the agreement, should the number of check-off authorizations fall below fifty per cent of the number of employees, falls into the same category. By this proposal the employer took the position that the Union's representation depended, not upon the Board's certification, but upon a test completely

foreign to the statute, i.e., the number of check-off authorizations.

None of the factors vitiating the employers' proposals in *Darlington Veneer* and *Corsicana Cotton Mills* was present in respondent's counter-proposal. The distinction between this case and the *Darlington Veneer* and *Corsicana Cotton Mills* cases was clearly recognized and lucidly explained by the Court below as follows:

"In the present case, there was no attempt to bargain with the employees instead of the designated representatives. The Union was at all times recognized as the exclusive representative of the employees; the bargaining was done with it, not with the employees. Any requirement that the employees approve the action of the Union would be the result of an agreement with the Union to that effect. \* \* \* The facts in that case [*Corsicana Cotton Mills*] go far beyond the present case. In that case the certified representative would have been unable to make *any* binding agreement with the employer, who as a practical matter would be dealing with all of the employees in agreeing upon the terms of the contract." (pp. 26, 27, Board's Petition, emphasis the Court's).

As both the Court below and the Seventh Circuit in *Allis-Chalmers* recognized, respondent's counter-proposal did not seek to deal directly with the employees, or to interfere in the internal efforts of the Union, or to determine, independent of Union agreement, how or under what circumstances a strike might be called. Rather, pursuant to the admonition of this Court in *Ford Motor Co. v. Huffman*, 345 U. S. 330, 337-338, it recognized the Union's "discretion to make such concessions and accept such advantages as, in the light of all relevant considerations, they believe will best serve the interests of the parties represented." As the Court below pointed out, the individual

employees could have no voice whatsoever in the question of a strike except as "*the result of an agreement with the Union to that effect.*" (p. 26, Board's Petition). Or, as the Seventh Circuit said, such participation was dependent upon "*the decision of the Union as to whether it will accept or refuse the proposal.*" (213 F. 2d 374 at 378).

Even in *Darlington Veneer* the Court did not hold the employer's proposal subject to any *per se* test of illegality. Rather, its conclusions were that the employer's proposals "were put forward in the thought that they would not be accepted and for the purpose of avoiding and not arriving at an agreement \* \* \*", and "insistence upon such provisions \* \* \* is so unreasonable \* \* \* as to furnish of itself a sufficient basis for the finding by the Board of failure to bargain in good faith; \* \* \*", and "\* \* \* we think that the Board was fully warranted in finding that the Company had failed to bargain in good faith \* \* \*." (236 F. 2d 85 at pp. 87, 88 and 90 respectively). *In this case the fact that respondent at all times bargained in complete good faith has never been questioned.*

**C. The Decision Below Does Not Conflict With the Decisions Listed in the Board's Cumulative Citations in Support of *Darlington Veneer* and *Corsicana Cotton Mills*.**

At pages 13 and 14 of the Board's Petition, and particularly in footnote 8 on page 14, the Board includes a long list of citations cumulative to the alleged rule of *Darlington Veneer* and *Corsicana Cotton Mills*. To distinguish these cases in detail by a specific discussion of each is neither appropriate nor necessary here. Each of these cases, however, is distinguishable from the instant case for one or more of the following reasons:

1. They were decided before and without reference to this Court's decision in *National Labor Relations Board v. American National Insurance Co.*, 343 U. S. 395, that "the duty of bargaining collectively is to be enforced by the application of the *good faith bargaining standards* of Section 8(d) to the facts of each case \* \* \*." (Emphasis supplied); or

2. Under the facts of the particular case there involved and contrary to the conceded facts of this case,

(a) The employer refused, in fact, either to recognize and bargain with the certified bargaining representative, through agents of the latter's selection, or to recognize and bargain with such persons as the acknowledged agents of the certified representative. Cf. *National Labor Relations Board v. Louisville Refining Co.*, 102 F. 2d 678, certiorari denied, 308 U. S. 568; *American Laundry Machinery Co. v. National Labor Relations Board*, 174 F. 2d 124; *National Labor Relations Board v. Aldora Mills*, 180 F. 2d 580, enforcing 79 N. L. R. B. 1; *National Labor Relations Board v. Taormina Co.*, 207 F. 2d 251; *National Labor Relations Board v. Pecher Lozenge Co.*, 209 F. 2d 393, certiorari denied, 347 U. S. 953; *National Labor Relations Board v. Griswold Mfg. Co.*, 106 F. 2d 713; *Madden v. International Union, etc.*, 79 F. Supp. 616; *McQuay-Norris Mfg. Co. v. National Labor Relations Board*, 116 F. 2d 748, certiorari denied, 313 U. S. 565; <sup>1</sup> *May Department Stores Co. v. National Labor Relations Board*, 326 U. S. 376; *National*

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<sup>1</sup> (Decided by the same Court and Judge that decided *Allis-Chalmers*.)



*Licorice Co. v. National Labor Relations Board*, 309 U. S. 350; *National Labor Relations Board v. George P. Pilling & Son Co.*, 119 F. 2d 32; *Hartsell Mills Co. v. National Labor Relations Board*, 111 F. 2d 291; *National Labor Relations Board v. H. G. Hill Stores*, 140 F. 2d 924; *Hill v. Florida*, 325 U. S. 538; or

(b) Although bargaining was conducted by the employer with agents designated, for the purpose, by the certified employee representative, such bargaining was not conducted in good faith in fact, and, therefore, transgressed the rule of *American National Insurance*. Cf. *National Labor Relations Board v. Aldora Mills*, 180 F. 2d 580, enforcing 79 N. L. R. B. 1; *National Labor Relations Board v. Taormina*, 207 F. 2d 251; *National Labor Relations Board v. George P. Pilling & Son Co.*, 119 F. 2d 32; *Hartsell Mills Co. v. National Labor Relations Board*, 111 F. 2d 291; *National Labor Relations Board v. H. G. Hill Stores*, 140 F. 2d 924; or

(c) The employer recognized the certified bargaining agent as the representative of less than all of the employees involved. Cf. *McQuay-Norris Mfg. Co. v. National Labor Relations Board*, 116 F. 2d 748, certiorari denied, 313 U. S. 565; *National Licorice Co. v. National Labor Relations Board*, 309 U. S. 350; *Hartsell Mills Co. v. National Labor Relations Board*, 111 F. 2d 291; or

(d) The proposals of the employer inherently contravened the purposes or the specific mandate of the Act and, therefore, violated the Act the moment they were made or proposed. Cf. *National Labor Relations Board v. Dalton Telephone Co.*,

187 F. 2d 811, certiorari denied, 342 U. S. 824 (refusal to sign contract after agreement actually reached); *National Labor Relations Board v. Pecheur Lozenge Co.*, 209 F. 2d 393, certiorari denied, 347 U. S. 953; *Hartsell Mills Co. v. National Labor Relations Board*, 111 F. 2d 291; *National Labor Relations Board v. H. G. Hill Stores*, 140 F. 2d 924; *Hill v. Florida*, 325 U. S. 538.

**D. The Basic Question Presented Has Already Been Decided by This Court in the American National Insurance Co. Case.**

In *NLRB v. American National Insurance Co.*, 343 U. S. 395, as in the case here, the Board charged an employer with a *per se* violation of Section 8(a) (5) because it "insisted" upon a contract provision permitting it to retain unilateral control of certain terms and conditions of employment. There as here, the employer's position was by way of counter-proposal to a Union demand on the same general subject. There as here, the Board conceded that the proposal was legal to make but contended that "insistence" upon it at some time became illegal *per se*.

This Court's summary rejection of the Board's *per se* approach, coupled with its clear analysis of why Congress measured the duty of an employer under Section 8(a) (5) by his good faith and by no other yardstick, appears from the following excerpts from its opinion:

"The Board offers in support of the portion of its order before this Court a *theory quite apart from the test of good faith bargaining* prescribed in Section 8(d) of the Act, a theory that respondent's bargaining for a management functions clause as a counter-proposal to the Union's demand for unlimited arbitration was, '*per se*,' a violation of the Act.

*"Counsel for the Board do not contend that a management functions clause covering some conditions of employment is an illegal contract term.*

\* \* \* \* \*

*"If the Board is correct, an employer violates the Act by bargaining for a management functions clause touching any condition of employment without regard to the traditions of bargaining in the particular industry or such other evidence of good faith as the fact in this case that respondent's clause was offered as a counterproposal to the Union's demand for unlimited arbitration. The Board's argument is a technical one for it is conceded that respondent would not be guilty of an unfair labor practice if, instead of proposing a clause that removed some matters from arbitration, it simply refused in good faith to agree to the Union proposal for unlimited arbitration. \* \* \**

*"Conceding that there is nothing unlawful in including a management functions clause in a labor agreement, the Board would permit an employer to 'propose' such a clause. But the Board would forbid bargaining for any such clause when the Union declines to accept the proposal, even where the clause is offered as a counterproposal to a Union demand \* \* \**

\* \* \* \* \*

*"Congress provided expressly that the Board should not pass upon the desirability of the substantive terms of labor agreements. Whether a contract should contain a clause fixing standards for such matters as work scheduling or should provide for more flexible treatment of such matters is an issue for determination across the bargaining table, not by the Board. \* \* \**

*"Accordingly, we reject the Board's holding that bargaining for the management functions clause proposed by respondent was, per se, an unfair labor practice. \* \* \* The duty to bargain collectively is to*

be enforced by application of the good faith bargaining standards of Section 8(d) to the facts of each case rather than by prohibiting all employers in every industry from bargaining for management functions clauses altogether." (pp. 404 to 409; emphasis added.)

#### CONCLUSION.

The decision of the Court of Appeals, with respect to which the Board seeks review, is correct. It is not in conflict with the decision of any other Court of Appeals, and is in harmony with the decision of the Court of Appeals for the Seventh Circuit in *Allis-Chalmers*, and with the decision of this Court in *American National Insurance*.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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**In the Supreme Court of the United States**

OCTOBER TERM, 1957.

**No. 53.**

NATIONAL LABOR RELATIONS BOARD,

*Petitioner,*

**vs.**

WOOSTER DIVISION OF BORG-WARNER CORPORATION.

**No. 78.**

WOOSTER DIVISION OF BORG-WARNER CORPORATION,

*Cross-Petitioner,*

**vs.**

NATIONAL LABOR RELATIONS BOARD.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SIXTH CIRCUIT.

**BRIEF FOR WOOSTER DIVISION OF BORG-WARNER  
CORPORATION.**

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# In the Supreme Court of the United States

OCTOBER TERM, 1957.

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No. 53.

NATIONAL LABOR RELATIONS BOARD,

*Petitioner,*

vs.

WOOSTER DIVISION OF BORG-WARNER CORPORATION.

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No. 78.

WOOSTER DIVISION OF BORG-WARNER CORPORATION,

*Cross-Petitioner,*

vs.

NATIONAL LABOR RELATIONS BOARD.

---

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SIXTH CIRCUIT.

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**BRIEF FOR WOOSTER DIVISION OF BORG-WARNER  
CORPORATION.<sup>1</sup>**

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**COUNTER-STATEMENT OF QUESTIONS PRESENTED.**

In the course of collective bargaining between the Company and the Union, *during which it is conceded that the Company at all times was acting in good faith*, the Company advanced two *counter-proposals* in response to Union proposals originally made on the same subjects. The Company never, as the Board implies in its Brief, insisted upon

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<sup>1</sup> The time for filing this Brief was extended by order of the Clerk of this Court to and including October 14, 1957.

its counter-proposals as conditions precedent to the execution of a written contract incorporating agreement. therefore reached in the bargaining. This issue never arose because *no agreement was reached* until the Union authorized the signing of the contract finally executed. The facts are that the Company declined to separate the two counter-proposals in question from, and withheld and conditioned its agreement to, the many other proposals and counter-proposals with respect to wages, hours and other terms and conditions of employment involved in the bargaining unless the Union would accept the Company's counter-proposals in lieu of the Union's proposals on the same subjects.

The two counter-proposals not only are inaccurately described in the Board's Brief, but are misleadingly labeled as a "ballot clause" and a "recognition clause." They may more accurately be described, as they have been throughout the litigation below, as a "limited no-strike clause" and the "preamble clause." The latter clause might also be descriptively referred to as an "identification clause."

In response to an original Union proposal for a limited no-strike clause (G. C. Ex. 4, p. 26), the Company submitted its limited no-strike clause proposing that the Union agree that no strike should be called on any issue not subject to arbitration until after there had been a vote by secret ballot among all of the employees, both union and non-union, in the bargaining unit (G. C. Ex. 5 (c), R. 392a).

In response to the Union's original proposal that it identify itself in the preamble of the contract as "International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (U. A. W.-C. I. O.) and its Local Union 1239," the Company first advanced the counter-proposal that, in the preamble, the Union agree to identify itself in its local name, i.e., "Local Union



1239, affiliated with the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (U. A. W.-C. I. O.).” After successive proposals and counter-proposals in the course of the bargaining, the Union’s ultimate proposal was to identify itself as “United Automobile, Aircraft and Agricultural Implement Workers of America, Local Union No. 1239,” while the Company’s ultimate counter-proposal became “Local Union No. 1239, United Automobile, Aircraft and Agricultural Implement Workers of America” (R. 351a).

It is not denied that throughout the bargaining the Company, in fact, met and conferred with all of the representatives selected by the Union as the exclusive representatives of its employees and with no others. Moreover, no Company objection was ever made to the right of the Union’s International representatives to approve the contract. In fact, the Company bargainer advised the Union representatives that the Company expected that the contract would be signed by International officers (R. 316a).

1. The question presented in No. 53, therefore, is whether the Company *per se* in violation of Section 8(a)(5) of the Act refused to recognize the Union or *per se* in violation of Section 8(a)(5) of the Act compelled the Union to agree to a provision outside the bargaining area prescribed by the Act, under circumstances where it is conceded that the Company (i) in fact bargained in good faith, (ii) in fact fully recognized the Union and no other as the exclusive representative, but (iii) conditioned the Company’s willingness to agree to terms and conditions of employment upon the Union’s agreement to the Company’s no-strike counter-proposal in lieu of the Union’s no-strike proposal.

2. The question presented in No. 78, therefore, is whether the Company *per se* in violation of Section 8(a) (5) of the Act refused to recognize the Union or *per se* in violation of Section 8(a) (5) of the Act compelled the Union to agree to a provision outside the bargaining area prescribed by the Act, under circumstances where it is conceded that the Company (i) in fact bargained in good faith, (ii) in fact fully recognized the Union and no other as the exclusive representative, but (iii) conditioned the Company's willingness to agree to terms and conditions of employment upon the Union's agreement to the Company's counter-proposal in lieu of the Union's proposal to identify the Union in the preamble to a labor contract by a name different from the name stated in the Board's certification.

## **COUNTER-STATEMENT OF THE CASE.**

### **1. Bargaining Background of the Parties.**

The Company is an unincorporated but independent division of Borg-Warner Corporation, operating a plant in Wooster, Ohio, a small town in a rural area (R. 168a, 239a). Another independent division of Borg-Warner Corporation, the Pesco Products Division, operates a plant in Cleveland, Ohio, in a large industrial area (R. 184a, 239a). The Company and Pesco make similar products (R. 185a).

The Union, having had labor contracts covering Pesco employees since 1944, commenced an organization campaign at the Company's plant in the Fall of 1952, in which the Union's local Pesco representatives took an active part (R. 239a, Resp. Ex. 2 and 13, R. 112a, 123a). Although the representation election was held before the Union chartered its local (R. 239a), the Union's pre-election promise to the Company's employees was that "you will have your

own charter, your own local union, your own contract and seniority, and officers elected from your own plant" (Resp. Ex. 2, R. 114a).

The consent election agreement, pursuant to which the election was conducted, was signed by the Union and approved by the Board, and expressly identified the Union simply as "UAW-CIO." The ballot used by the employees in voting likewise identified the Union simply as "UAW-CIO" (G. C. Ex. 3(a); R. 28a-30a). When the Union was certified as the bargaining representative, the Board's certification identified the Union simply as "International Union, United Automobile, etc., Workers of America, C. I. O." (G. C. Ex. 3-a-b-c, R. 25a-34a).

Before it opened the bargaining, the Union chartered its Local No. 1239 (R. 239a, 240a). The first Union proposals to the Company were delivered by the Union's Local president, and were denominated as "*Proposal of Local 1239, U. A. W.-C. I. O., to Wooster Division of Borg-Warner Corporation*" (R. 154a, 240a; G. C. Ex. 4, p. 8 and Schedule). The substantive terms of the proposal were determined by the local bargaining committee and based on the Pesco contract (R. 240a, 241a). Throughout the bargaining which followed, the Union sought to compel the Company, at Wooster, to accept the provisions of the Pesco contract. (See, e.g. R. 240a-241a; G. C. Ex. 9, 63; Resp. Ex. 2.)

## 2. The Counter-Proposals in Question.

### A. The Limited No-strike Clause.

In the Union's original proposal, it submitted a limited no-strike clause (G. C. Ex. 4, p. 26). In response to the Union's proposed no-strike clause, the Company proposed a qualified no-strike clause: no strikes at all over arbitrable issues, but freedom to strike over non-

arbitrable issues after a specified procedure, culminating in a secret ballot, had been followed (G. C. Ex. 5-C, pp. 6-7; G. C. Ex. 11). (Contrary to the Board's claim, this was only a no-strike clause as the Argument, *infra*, shows.)

The Company's counter-proposal of the limited no-strike clause was not, in any way, a novel bargaining concept for this Union. In fact, the limited no-strike clause was patterned after an earlier contract made by this same Union with another Company. At the time the counter-proposal was made the Company bargainer advised the Union that he "had gotten it from another U.A.W.-C.I.O. contract (R. 319a, 320a).

Thus, the bargaining practice of this Union, as well as other unions, had included acceptance of similar and more restrictive no-strike clauses in contracts with other employers (R. 666-686; Resp. Ex. 29-36). There was never any suggestion in connection with this counter-proposal that non-union members should vote in Union meetings with respect to the strike questions (R. 259a).

The Union made only one no-strike proposal, the one contained in its first proposed contract (G. C. Ex. 4, p. 26).

#### **B. The Preamble or Identification Clause.**

The Board's certificate named the Union as "International Union, United Automobile, Aircraft and Agricultural Implement Workers of America." (G. C. Ex. 3-C; R. 33a). In its original proposal, the Union sought to identify itself as "International Union, United Automobile, Aircraft and Agricultural Implement Workers of America and its Local Union No. 1239," an obvious departure from the description of the Union in the Board's certification. Throughout a succession of proposals for its

identification in a contract preamble, the Union *never* omitted "Local Union No. 1239" from its proposals for a preamble (G. C. Ex. 4, 9; 350a-351a, 357a-358a).

The Company offered successive counter-proposals, seeking *Union agreement* "that the primary emphasis ought to be put on the Local representatives of the Union" in view of the fact "that the problems arose here [in Wooster]; that the people who were involved in those problems lived and worked here; that this was where any problems which arose ought to be settled [and] that the people down here were responsible people with whom it was most likely that we would deal" (R. 315a). Ultimately, the difference between the Company and the Union on this point was reduced to the Union proposing "United Automobile, etc., Workers of America, Local Union No. 1239," and the Company proposing "Local Union No. 1239, United Automobile, etc. Workers of America" (R. 350, 351a).

In the long history of bargaining between the same Union and the parent corporation's Pesco Division, the principal representatives of both Union and employer were the same bargainers who represented the Union and the Company respectively in the bargaining here involved (R. 239a, 228a). In the Pesco bargaining, despite the fact that the Board's certification described only the Local Union, the Union had insisted that it be described in the contract by both its International and Local names. It had carried this insistence to the point of strike in order to compel acquiescence on the part of the employer (R. 247a, 313a, 521a).

Further, the Union had a long established practice of bargaining with other employers with respect to the way in which it should be identified in its collective bargaining contracts. In some instances this identification was in its



international name, in others only in the name of its applicable local, and in still others in both names (R. 377a, 383a).

### **3. Control of Bargaining and Contract Administration Vested in Union's Locals by Its Constitution.**

Membership in the International Union flows from membership in a Local union (G. C. Ex. 61, R. 89a). The right to vote in union conventions is restricted to delegates from Local unions who must be members of such Locals (G. C. Ex. 61, R. 90a). No Union representative has authority to negotiate the terms of any contract without first obtaining the approval of the Local Union. Even after negotiations have been concluded, the contract can become effective only after approval by a majority vote of the Local Union. Even national agreements are ineffective until ratified by the Local unions involved (G. C. Ex. 61, R. 91a, 92a).

The Union's International representatives are bound by contracts concluded out of conferences between Local unions and employers. Even when a grievance exists between a Local union and management, International representatives may participate only at the request of the Local Union, and then only when a Local committee is participating in all negotiations (G. C. Ex. 61, R. 90a, 91a). In the bargaining negotiations in question, the Union's International representatives expressly acted only on behalf of the Local bargaining committee (R. 240a, 241a).

**4. The Concession That in the Advancement of its Counter-proposals and in All Other Respects the Company Acted in Good Faith in Fact Throughout the Bargaining.**

Both in the hearing before the Trial Examiner and in oral argument before the full Board, the general counsel freely conceded that at all times during the bargaining the Company had acted in good faith in fact, and no claim to the contrary was ever asserted. This was recognized by the Trial Examiner (R. 389a), both the majority (R. 478a) and the minority (R. 490a) of the Board, and the Court of Appeals (R. 516a, 517a-518a).

**5. The Facts That Throughout the Bargaining the Company at all Times Recognized, and Met and Conferred With the Union and no other, as the Exclusive Bargaining Representative of the Company's Employees.**

There is no claim that the Company at any time failed, *in fact*, to comply with the requirements of Section 8(d) of the Act "to meet at reasonable times and confer in good faith" with the Union "with respect to wages, hours and other terms and conditions of employment." Nor is there any claim that, *in fact*, the Company failed at any time to recognize the Union for such purposes as "the exclusive representatives of all the employees" as required by Section 9(a) of the Act.

In the bargaining, the Company recognized, met and conferred with all representatives selected by the Union for the purpose. These included the Union's Local representatives and officers, its International representatives, one of its Regional Directors, an Administrative Assistant, its Publicity Director, and an official of its Borg-Warner Council (R. 152a, 153a). The Company did not recognize or meet or confer with anyone else.

**6. The Recognition of the Trial Examiner, the General Counsel, the Board Majority and Minority, and the Court of Appeals, that the Company's Counter-proposals Were Legal to Make, Legal to Accept, and Legal to Include in a Collectively Bargained Labor Contract.**

The trial examiner specifically found "that submission of the Company's proposals did not violate the act" (R. 431a), and that they could be "adopted if assented to" (R. 430a). The general counsel stated that he did "not contend that those propositions were matters that could not be proposed by the Company or that they were matters that the Union could not agree" to (p. 18, Report of oral argument before the Board). The majority of the Board found "that the respondent could make these proposals"; that they were "not in conflict with the provisions of the Act," and that the Union was entirely free to agree to the proposals (R. 479a). The Court of Appeals recognized the validity of this proposition in holding "that the designated bargaining agent is the party with whom the contract is to be made *unless it voluntarily relinquishes such right*" (R. 517a, 519a; emphasis supplied).

**7. The Union Agreement to and Signature of a Labor Contract with the Company, at the Direction of the Union's Executive Board.**

The ultimate execution of a collective bargaining agreement not only was consented to but was originally conceived and specifically directed by the Union's International representatives. This contract contained the last of the Company's several counter-proposals for description of the Union in the preamble and the Company's no-strike counter-proposal.

Four or five of the Union's International representatives summoned Local representatives and directed them "to recommend to the membership \* \* \* that we end the

strike and go back to work" (R. 364a). The Union's Local president opposed this action (R. 364a). The Union's local representatives "didn't have any intention of going in and talking to the Company until the International called us \* \* \* and asked us to talk the membership into going back to work" (R. 365a). Before the contract was signed it was approved by the Executive Board of the Union in Detroit (R. 362a, 363a, 375a).

#### **8. The Continued Recognition of the Union and Administration of the Labor Contract.**

The Union and the Company administered the contract throughout its life. This entire period was characterized by industrial peace in which the Company continued to give full recognition to the Union and to no other. Local and International representatives of the Union met and conferred with the Company on more than a dozen occasions (R. 368a). Dues and initiation fees were checked off, grievances were processed, and the Union carried at least one grievance to arbitration (Resp. Ex. 23, 24-A-J, G. C. Ex. 13, p. 6).

Bargaining in this period was not limited to administration of the labor contract; it extended to matters not covered by the contract as well. The Company agreed to expand the bargaining unit to include employees of another division which acquired manufacturing space in the Company's plant (R. 368a-370a). The seniority of the additional employees was established by agreement of the Union and the Company (R. 370a). The Company also bargained with the Union with respect to the latter's request for a wage increase, even though the labor contract did not contain a wage reopening clause (G. C. Ex. 13; R. 370a). Both International and Local representatives of the Union participated in the bargaining with respect to all of these matters (R. 368a-370a).

## SUMMARY OF ARGUMENT.

This is a case of first impression, but the principles which control its decision have long been settled by this Court. Two questions are presented for decision. Both involve the power of the Board to apply *per se* tests of illegality to contract counter-proposals, neither of which, admittedly "is an illegal contract term" and neither of which has been charged or claimed to be "violative of an express provision of the Act." Cf. *N. L. R. B. v. American National Insurance Company*, 343 U. S. 395, 405 footnote 15.

The Board held that when the Company conditioned its tender of agreement as to terms and conditions of employment upon Union acceptance of the two counter-proposals in question in lieu of the Union proposals on the same subjects, the Company, as to each:

(a) *Per se* refused to recognize the Union despite the facts that throughout the bargaining the Company admittedly acted in continued good faith and met and conferred with the Union, and no other, as the exclusive representatives of its employees; and

(b) *Per se* refused to bargain because of the Board's view, again as a matter of law and without regard to the facts of this case, that both counter-proposals fell outside the bargaining area contemplated by the Act.

The Court of Appeals concurred with the Board only as to the counter-proposal involving the name by which the Union should be identified in the preamble clause of the contract and then for reasons differing from those of the Board. The Court accepted the Board's theory that the Company's position on this point resulted *per se* in a failure of Union recognition, and then concluded *ipso facto*



that the clause could not be within the bargaining area prescribed by the Act.

Both the Board and Court ignored this Court's repeated direction that the fundamental purpose of the Act is to foster *free* collective bargaining. "The theory of the Act is that free opportunity for negotiation with accredited representatives of employees is likely to promote industrial peace and may bring about the adjustments and agreements which the Act in itself does not attempt to compel." *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45.

The only substantive limitation imposed by the Act upon the area of free collective bargaining is to exclude therefrom a proposal which "is an illegal contract term" or "violative of an express provision of the Act." And "the Board may not \* \* \* sit in judgment upon the substantive terms of collective bargaining agreements." *National Labor Relations Board v. American National Insurance Company*, 343 U. S. 395, 404, 405, footnote 15.

"This inquiry must *always* be whether or not *under the circumstances of the particular case* the statutory obligation to bargain in good faith has been met." *National Labor Relations Board v. Truitt Manufacturing Co.*, 351 U. S. 149, 153-154. (Emphasis supplied.)

1. A PER SE VIOLATION OF THE ACT CANNOT RESULT FROM THE COMPANY'S GOOD FAITH CONDITIONING OF ITS AGREEMENT UPON ACCEPTANCE BY THE UNION OF COUNTER-PROPOSALS WHICH WERE NOT ILLEGAL AND DID NOT VIOLATE ANY PROVISION OF THE ACT.

The trial examiner, the Board and the Court of Appeals agreed that both counter-proposals were lawful to advance, lawful to accept, and lawful to include in a labor contract. No charge to the contrary was ever made.

In these circumstances, the Board's claim that a violation of Section 8(a)(5) resulted as a matter of law from advancement of the counter-proposals or conditioning the Company's agreement upon acceptance of them by the Union is not supported by the Act and is contrary to the decision of this Court in *NLRB v. American National Insurance Co.*, 343 U. S. 395.

In that case this Court squarely rejected any theory of *per se* violation of the Act's bargaining requirements, and expressly affirmed that a bargainer's compliance with his duty to bargain is to be tested only by the statutory test of good faith.

## 2. NO QUESTION OF RECOGNITION IS INVOLVED.

When the statutory test, rather than the Board's *per se* standard, be applied, no question of recognition is involved. The words "recognize" and "recognition" are not statutory words. They are simply shorthand expressions of the combined duty imposed by Sections 8(a)(5), 9(a) and 8(d) of the Act. The Act required only that the Company and the Union "meet and confer in good faith" with each other, the Company meeting and conferring with no other, with respect to questions arising in the bargaining area prescribed by the statute.

As this Court has so clearly stated, the statute "imposes upon the respondent [the Company] *only* the duty of conferring and negotiating with the authorized representatives of its employees" and "the negative duty to treat with no other." *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 44. (Emphasis supplied.)

Here, the Company's good faith is conceded and no suggestion is or can be made that the Court of Appeals was factually mistaken when it found that "in the present

case there was no attempt to bargain with the employees instead of the designated representatives. The Union was at all times recognized as the exclusive representative of the employees. The bargaining was done with it, not with the employees" (R. 517a).

So far as concerns recognition, the Company did all that the statute required. No greater duty can be exacted of it through some *per se* concept of legality engrafted upon the statute by the Board.

The Board concedes that both of the Company's counter-proposals were legal, and that neither contravened any express provision of the Act. It was conceded by the Board and the Court of Appeals, and is conceded here in the Board's Brief, that the counter-proposals were legal to make, legal for the Union to accept, and legal to include in a collective bargaining contract. Therefore, the Company's conditioning its agreement upon Union acceptance of the counter-proposals in lieu of the Union's proposals on the same subjects cannot be said to have constituted *per se* a failure of recognition of the Union or a violation of any provision of the Act.

### **3. BOTH COUNTER-PROPOSALS ARE WITHIN THE BARGAINING AREA PRESCRIBED BY THE ACT.**

Both of the counter-proposals, when considered in the light of the facts of this case and not by a mechanical, arbitrary *per se* test, fall within the bargaining area prescribed by the Act. Any attempt to apply a rule by which any bargaining proposal or counter-proposal, "not violative of an express provision of the Act" can be declared illegal *per se*, frustrates rather than effectuates the policy of the Act. It completely disregards "the circumstances of the particular case," deprives the bargainers of "that free opportunity for negotiation" guaranteed by the Act, and

permits the Board to "sit in judgment upon the substantive terms of collective bargaining agreements" contrary to the theory of the Act.

The bargaining area of "wages, hours and other terms and conditions of employment, or the negotiation of an agreement," prescribed by the Act is not static, includes the right to bargain about the exceptional as well as the routine, and varies according to the bargaining practices of industry generally, those peculiar to a particular industry, and even those of special interest only to a particular employer and his employees.

Both Congress and this Court have been careful to preserve free collective bargaining from substantive governmental interference, whether by Congress, the Board, the Courts, or State regulation. In a system of free collective bargaining, determination of what subjects are or are not within the bargaining area prescribed by the Act must depend upon the good faith of the parties and the facts and circumstances of each particular case.<sup>2</sup>

In the light of (a) common practice of employers and unions generally to bargain about the names by which unions will be identified in collective bargaining contracts, with resultant agreement sometimes on an international name, sometimes on a local name, sometimes on both, and sometimes on a hybrid (b) the history of bargaining between this Union and other divisions of the present corporation over the subject, and (c) the history and background of the representation election in this case, the

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<sup>2</sup> "Under free collective bargaining the parties in each negotiation have the right to determine for themselves what subjects are to be dealt with jointly. This carries a risk that either party may resort to a strike or to a lock-out in order finally to resolve differences over the scope of collective bargaining." Dr. George Taylor, *Government Regulation of Industrial Relations*, p. 15 (New York, Prentice-Hall, Inc., 1948).

preamble clause in this bargaining clearly was within the bargaining area prescribed by the statute. This must be particularly true where, as here, no Union representative has authority, under the Union constitution, even to negotiate the terms of a contract without first obtaining the approval of the Local Union, and where no contract can become effective until after approval by the Local Union.

In the light of the fact that bargaining over an absolute no-strike clause is universally recognized to be within the bargaining area of the Act, bargaining over a limited no-strike clause must similarly be included. This is further emphasized in this particular case by the fact that this very Union had previously agreed to similar clauses in its collective bargaining contracts with other employers, and countless other unions had also agreed to similar clauses.

When it is remembered in connection with its counter-proposals, that the Company at all times met and conferred with the Union, and with no other, in admitted good faith, it must follow that the Company could not have been guilty of a failure to bargain collectively in good faith within the mandate of the Act.



## ARGUMENT.

The difficulty with the approach of both the Board and the Court of Appeals to the case lies in their failure to appreciate the basic concept of the system of free collective bargaining prescribed by the Act. Here, as has too frequently has been the case before, the Board and the lower Federal Court, in their construction of the Act, have ignored the clear direction of this Court that the fundamental purpose underlying the Act is to foster *free* collective bargaining. It is no purpose of the Act to restrict such bargaining except as to those few matters which the Act, by express terms, makes illegal.

At the very threshold of this Court's interpretation of the Act it said:

"The Act does not compel agreements between employers and employees. *It does not compel any agreement whatever.* It does not prevent the employer 'from refusing to make a collective contract and hiring individuals on whatever terms' the employer 'may by unilateral action determine.' \* \* \* The theory of the Act is that *free opportunity* for negotiation with accredited representatives of employees is likely to promote industrial peace and may bring about the adjustments and agreements which the Act in itself does not attempt to compel." *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45. (Emphasis supplied.)

Recently, in rejecting a contention of the Board very similar to that urged here, this Court was compelled again to remind those charged with responsibility for administering the Act that:

"\* \* \* the Board may not, either directly or indirectly, \* \* \* sit in judgment upon the substantive terms of collective bargaining agreements." *National Labor*

*Relations Board v. American National Insurance Company*, 343 U. S. 395, 404.<sup>3</sup>

There being no coloration of bad faith here, correct decision of this case requires segregation of that conduct of the Company which it is charged resulted in a failure of Union recognition, and that conduct which it is claimed was an attempt to bargain on subjects outside the statutory bargaining area. The failure of the Board and Court below so to segregate the conduct, and when so segregated to analyze it in the light of the actual language and requirements of the Act, produced their fundamental error.

By the application of a *per se* test of illegality, the Board found that both of the Company's counter-proposals, and the Court found that the preamble clause, could not be so bargained about as to be made a condition to the Company's agreement to terms and conditions of employment. Both Board and Court found the existence of illegality *per se* in what they apparently treated as a failure to recognize the Union arising *ipso facto* from the counter-proposals themselves.<sup>4</sup>

A careful examination of the Act itself and the duties which it imposes with respect to recognition and areas of bargaining respectively discloses, since there are no overtones of bad faith in this case, that actually no failure of recognition is involved at all. In fact, the only question

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<sup>3</sup> Moreover, "either party shall be free to decide whether proposals made to it are satisfactory." 343 U. S. 395, 403, footnote 10. And, as this Court suggested, free collective bargaining in good faith is limited only where a proposal "is an illegal contract term" or is "a clause violative of an express provision of the Act." 343 U. S. 395, 405, footnote 15.

<sup>4</sup> Thereby the Board disregarded this Court's admonition that "The inquiry must always be whether or not *under the circumstances of the particular case* the statutory obligation to bargain in good faith has been met." *N. L. R. B. v. Truitt Manufacturing Co.*, 351 U. S. 149, 153-154.

with which this Court must ultimately concern itself is whether, or not conceding good faith and recognition as defined by the Act, the subject matter of the counter-proposals fell within the bargaining area specified in the Act.

Both the Board and the Court held that the question of the name in which a bargaining agent shall sign a contract, and the Board held that the question of the right of employees to express their views with respect to a strike before their bargaining agent calls it, are questions which *per se* are excluded from the bargaining area prescribed by the Act. It is the Company's position that the Act and the prior holdings of this Court preclude application of any rule of *per se* illegality by which the bargaining area may be circumscribed. Rather, the proper rule by which bargaining subjects are to be tested is whether or not, under the facts of the particular case, they involved a matter of fact and not of law, wages, hours, or other terms or conditions of employment, or the negotiation of an agreement within the meaning of these terms as they are used in the Act.

**I. SINCE NEITHER COUNTER-PROPOSAL WAS ILLEGAL OR IN VIOLATION OF A PROVISION OF THE ACT, THE COMPANY'S GOOD FAITH CONDITIONING OF AGREEMENT UPON THEIR ACCEPTANCE CANNOT PER SE VIOLATE THE ACT.**

The general counsel did not charge, and neither the Board nor the Court of Appeals held, that the counter-proposals were illegal or in violation of any express provision of the Act. On the contrary, the trial examiner, the Board, and the Court of Appeals agreed that the counter-proposals were lawful for the Company to advance, lawful for the Union to accept, and lawful for inclusion in a labor contract executed between the Company and the Union *as the exclusive representative* of the Company's employees.

In the light of such concession the Board's claim that a *per se* violation of the Act resulted from either the advancement of said counter-proposals or the Company's conditioning agreement upon their acceptance entirely fails of support in the Act.

This is not the first time that the Board has attempted to impose such a *per se* test upon this Court, accompanied by similar concessions of lack of illegality in the counter-proposals involved. In *National Labor Relations Board v. American National Insurance Company*, 343 U. S. 395, the Board also conceded that the counter-proposal under attack did not constitute "an illegal contract term" (p. 405) which this Court equated to a concession that the counter-proposal was not "a clause violative of an express provision of the Act" (p. 405, footnote 15).

The similarity to the position of the Board here with that rejected by this Court in *American National Insurance Company* further appears from the Court's characterization of the Board's position in that case in the following language:

"Conceding that there is nothing unlawful in including \* \* \* (such a) clause in a labor agreement, the Board would permit an employer to 'propose' such a clause. But the Board would forbid bargaining for any such clause when the Union declines to accept the proposal, even where the clause is offered as a counter-proposal to a Union demand \* \* \*." 343 U. S., 395 at p. 408.

This Court rejected the Board's finespun theory of *per se* violation of the Act on the ground that "the Board was not empowered so to disrupt collective bargaining practices" (343 U. S. 395, at p. 408), and reaffirmed the fact that the rule by which the parties' conduct under the Act was to be measured was their good faith.

## II. NO QUESTION OF RECOGNITION IS INVOLVED.

### A. The Board and the Court of Appeals Confused the Requirements of the Act Relating to Recognition From Those Relating to Bargaining Area.

The Board, as to both counter-proposals and the Court of Appeals as to the preamble, misconceived the statutory requirements for Union recognition and confused them with the provisions of the Act respecting the bargaining area.

At the outset of its discussion, the Board majority stated that the Company's liability turned "upon the legal question of whether the proposals are obligatory subjects of collective bargaining," or stated differently, "permissible statutory demands" (R. 478a). But then the Board went on to support its decision by finding a violation of some unidentified provision of the Act with respect to so-called "recognition" of the Union's "status." The Board refers, without identification, to that "which requires an employer to recognize *a contract with the named certified representative*" (R. 481a, emphasis supplied). Again, the Board's opinion says that the advancement of the limited no-strike clause "is in derogation of the *status* of the statutory representative and thus violates the exclusive representation concept *embodied in the Act*" (R. 484a, R. 485a, Emphasis supplied).

No attempt is made by the Board majority to specify those provisions of the Act which it says require an employer to contract with a representative in the "name certified," nor any provision which proscribes any *bargaining subject* as a matter of law because it may relate to the way in which a Union may exercise its bargaining status. Nor does the Board specify any language "embodied in the Act," the concept of which it claims is violated.



The Court of Appeals similarly errs with respect to the preamble clause. The Court's position, however, presents the reverse side of the coin from that adopted by the Board. The Court says that the status of the Union to sign a labor contract, only in the *name* in which it is *certified*, "is acquired by statute" (R. 518a). In the next breath the Court recognizes, however, that "there is no specific provision to that effect" (R. 519a). As a result, the Court, to support its position, is driven to the finding that the "status," not "expressly acquired by statute," arises from some unexplained, clear implication.

In further confusion of the Act's requirements regarding recognition of representative status with those applicable to questions of bargaining area, the Court of Appeals says that the clear implication which it derives from the statute that a Union *must* sign a labor contract in the *exact name* which the Board uses in its certificate appues "unless it voluntarily relinquishes it" (R. 519a). Is the name in which a Union may sign a labor contract, then, a question of bargaining area, where proposals in regard to it may be accepted or rejected? Or, if the Court is correct that, as *a matter of law*, the name in which the Union is certified by the Board is an inviolable matter of status, excluded from the bargaining area, how may the Union legally act in derogation of such inviolable status through voluntary relinquishment?

**B. The Statutory Mandate is Not to "Recognize" but Only to Meet and Confer with the Union as the Exclusive Representative of Employees.**

The words "recognize" and "recognition" do not appear in the operative sections of the Act. The phrases "to recognize" or "accord recognition" to a union are simply shorthand expressions of the duty imposed by Sections

8(a)(5), 9(a) and 8(d). A combined reading of these Sections defines the entire duty of the employer as the duty:

"to meet and confer in good faith with the representatives, as the exclusive representatives, selected by a majority of employees, with respect to (i) wages, (ii) hours, and (iii) other terms and conditions of employment, (iv) the negotiation of an agreement, and (v) any question arising under an agreement."

As this Court said in *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 44:

"The provision of § 9(a) that representatives, for the purpose of collective bargaining, of the majority of the employees in an appropriate unit shall be the exclusive representatives of all the employees in that unit, *imposes upon the respondent only the duty of conferring and negotiating with the authorized representatives of its employees \* \* \*.*" (Emphasis supplied.)

and again:

"We said that the obligation to treat with the true representative was exclusive and hence imposed the negative duty to treat with no other."

**C. Since the Company Met and Conferred Only with Representatives Designated by the Union, Always Accepting Such Representatives for the Purpose, as the Exclusive Representatives of its Employees, it Must Follow, as a Matter of Law, that No Question of Non-recognition Under the Act Can Arise.**

The Company's good faith being conceded, the entire bargaining requirement imposed upon it by the Act was twofold:

- (1) To meet and confer with the Union representatives as the exclusive representatives of the Company's employees;

- (2) So meeting, to confer with them with respect to all matters falling within the bargaining area prescribed by the Act.

The representation mandate of the statute specifies those persons with whom bargaining must be conducted. It is only in the Act's specification of the bargaining area that there may be found definitions of or limitations on those matters which may be proposed, discussed, insisted upon or made conditions of agreement.

Representation questions can arise, therefore, only from a claim that the Company failed to comply with the first requirement, to meet and confer. The propriety or impropriety of subjects discussed while so meeting and conferring can arise only under the second requirement, which is the part of the Act which controls the legal bargaining area.

It is conceded that throughout the bargaining, the Company met and conferred exclusively with representatives of the Union. The Union itself chose those representatives. The Company never refused or attempted to evade its duty to meet and confer in good faith with those representatives as the exclusive representatives of the employees. The Board does not claim otherwise.

The Company complied entirely with this Court's declaration of "the negative duty to treat with no other." *Medo Photo Supply Corporation v. National Labor Relations Board*, 321 U. S. 678, 684. The Company never questioned the Union's exclusive authority to represent its employees. *Never did the Company do more than seek Union agreement to the counter-proposals.*

Even in the act of advancing and seeking the Union's acceptance of them, the Company fully recognized that only the Union—the exclusive representative—could

agree to them, or reject them. As the Court of Appeals correctly found:

"In the present case there was no attempt to bargain with the employees instead of the designated representatives. The Union was at all times recognized as the exclusive representative of the employees; the bargaining was done with it, not with the employees. Any requirement that the employees approve the action of the Union would be the result of an agreement with the Union to that effect." (R. 517a.)

There can be no claim, therefore, that the Company failed, in fact, to meet and confer with the Union representatives for the purposes required by the statute, or, in such meeting and conferring, failed to treat them as the exclusive representatives of the Company's employees.

**D. Protection of the Exclusivity of the Union's representation Being as Much a Responsibility of the Union as the Company, the Finding of the Board and the Court of Appeals that the Union Could Legally Accept the Counter-proposals Eliminates Any Question of Recognition.**

Recognition and protection of the exclusivity of the representative status of the Union was as much the responsibility under the Act of the Union as of the Company. It was an obligation and responsibility which the Union as much as the Company owed to the employees.

The Act not only guarantees to *employees* the right to designate or select their own bargaining representatives, but also provides assurance to *the employees* that their selectees or designees shall be "the exclusive representatives of all the employees (Sec. 9(a)). Further, the Union's right to compel bargaining by the Company (Sec.

8(a)(5) ) and duty to respond to the Company's bargaining demands (Sec. 8(b)(3) ) were only as "the representatives of his [its] employees, subject to the provisions of Section 9(a)," i.e., as "the exclusive representative[s]." Moreover, the Act specifically defines the bargaining obligation of the Company and the Union to have been "the *mutual* obligation of the employer and the representative" (Sec. 8(d)).

It must follow, so far as concerns any question of recognition, that if the advancement of a proposal or bargaining upon it with the Union constitutes a breach of the employer's duty to recognize the Union, or a derogation of the exclusivity of its representative status, its acceptance by the Union in bargaining must equally violate its mutual and reciprocal obligation to maintain the integrity and exclusivity of its representative status. Conversely, if acceptance of a proposal by the Union does not derogate its representative status, the advancement of or bargaining about the proposal by the Company cannot accomplish such derogation.

It must further follow that if the contract ultimately executed in this case was in derogation of the Union's representative status either because of the name in which the Union was identified in the preamble or because of the inclusion therein of the Company's limited no-strike counter-proposal, such derogation of the Union's representative status flowed as much from the Union's agreement to the clauses as from the Company's advancement thereof or bargaining with respect thereto. For that matter, if this be true then derogation of such status inhered equally in the Union's original proposal for a preamble.

The holding of the Board and the Court of Appeals that the counter-proposals were legal for the Union to



accept and include in a labor contract necessarily precludes the validity of any claim that advancing or bargaining about them by the Company resulted in any failure of recognition.

#### **E. The Cases Cited in the Board's Brief in Support of its Position are Irrelevant Upon Their Facts.**

Although the Board's Brief cites a long list of cases in support of its claims, none of them are relevant to the situation here before the Court. None of them supports the claim that the Act prescribes any standard for recognition other than the mandate "to meet and confer." None of them supports a concept of *per se* failure of recognition so long as Company and Union meet and confer in good faith. Practically all of them were rejected by this Court when previously urged upon it in support of a similar *per se* concept in *National Labor Relations Board v. American National Insurance Company*, 343 U. S. 395.

These precedents, for the most part, constitute *ad hoc* resolution of the controversies presented. Questions of good faith, the presence or absence of recognition, and the propriety or impropriety of bargaining subjects are frequently not segregated. Decisions are reached, not on careful analysis of what the language of the Act actually requires, but on varying theories of the bargaining results the authors believe the Act was designed to produce. Here, there is no dispute as to the good faith of the Company throughout the bargaining involved. This fact alone requires the rejection of much of the authority cited in the Board's Brief.

A brief summary of the actual holdings of the cases cited by the Board will serve to illustrate their inapplicability here. Most of them are cases wherein a breach of the duty to bargain was found to have resulted from a

failure in fact "to meet and confer." Others involved situations "where a party bargained for a clause violative of an express provision of the Act," "such as an attempt to invade the statutorily protected jurisdiction of the Board to determine whether or not unfair labor practice charges should be withdrawn," or a refusal to comply with the compulsory provision of the statute to execute a written contract incorporating any agreement reached," or where the employer conditioned its willingness to meet and confer in

<sup>5</sup> In this category fall *Medo Photo Supply Corporation v. N. L. R. B.*, 321 U. S. 678 (where employer granted a wage increase direct to employees); *Order of Railroad Telegraphers v. Railway Express Agency*, 321 U. S. 342 (where employer made special wage arrangements individually with selected employees); *May Department Stores Company v. N. L. R. B.*, 326 U. S. 376 (where employer applied directly to War Labor Board for permission to raise wages without prior consultation with bargaining representative); *Brooks v. N. L. R. B.*, 348 U. S. 96 (where employer refused in fact to meet and confer with certified Union because of erroneous belief that Union no longer represented employees); *N. L. R. B. v. Louisville Refining Co.*, 102 F. 2d 678, certiorari denied, 308 U. S. 568 (where employer refused in fact to meet with Union and held conferences direct with the employees); *N. L. R. B. v. Aldora Mills*, 180 F. 2d 580, enforcing 79 N. L. R. B. 1 (where employer refused to admit the existence of the bargaining representative and, in fact, refused to meet and confer with anyone as the representative of its employees); *N. L. R. B. v. Griswold Mfg. Co.*, 106 F. 2d 713 (although employer was willing to meet with Union members as individuals, it refused to meet and confer with them as employee representatives); *N. L. R. B. v. Pecheur Lozenge Co., Inc.*, 209 F. 2d 393 (refusal of employer to meet and confer in fact because strike was in progress).

<sup>6</sup> *N. L. R. B. v. American National Insurance Company*, 343 U. S. 395, 405, footnote 15.

<sup>7</sup> *Lion Oil Co. v. N. L. R. B.*, 40 L. R. R. M. 2193; *Hartsell Mills Co. v. N. L. R. B.*, 111 F. 2d 291; *N. L. R. B. v. H. G. Hill Stores*, 140 F. 2d 924; *American Laundry Machine Co. v. N. L. R. B.*, 174 F. 2d 124.

<sup>8</sup> *H. J. Heintz Co. v. N. L. R. B.*, 311 U. S. 514; *N. L. R. B. v. Dalton*, 187 F. 2d 811; *N. L. R. B. v. Corsicana Cotton Mills*, 178 F. 2d 344.

fact or to execute a contract reflecting agreements reached upon something other than the Board's certification of the representative's capacity,<sup>9</sup> or where either the Union or the employer made a change in the unit designated by the Board pursuant to the statute a condition precedent to meeting and conferring,<sup>10</sup> or where the employer, after having reached agreement, refused the execution of a written contract incorporating such agreement unless the employees should approve the terms of the agreement.<sup>11</sup> The decisions in many of these and other cases cited by the Board were controlled by a finding by both the Board and the courts that bad faith existed in the totality of the employer's conduct.<sup>12</sup>

No case is cited by the Board in support of the proposition that when an employer admittedly, in continuing good faith, meets and confers with the representatives selected by the Union which has been designated as the exclusive

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<sup>9</sup> *Hill v. Florida*, 325 U. S. 538 (obtain Florida license); *N. L. R. B. v. Dalton*, 187 F. 2d 811 (qualify under Georgia law), and *N. L. R. B. v. George P. Pilling & Son Co.*, 119 F. 2d 32 (organize competitors of employer).

<sup>10</sup> *N. L. R. B. v. Retail Clerks International Association*, 203 F. 2d 165 (Union insistence on change in unit); *McQuay-Norris Mfg. Co. v. N. L. R. B.*, 116 F. 2d 748 (Company demand for change in unit); *Douds v. International Longshoremen's Association*, 241 F. 2d 278 (Company demanded change in unit); *N. L. R. B. v. Darlington Veneer Company, Inc.*, 236 F. 2d 85 (where Company sought to have unit depend upon continuation of check-off agreements).

<sup>11</sup> *N. L. R. B. v. Corsicana Cotton Mills*, 178 F. 2d 344.

<sup>12</sup> *N. L. R. B. v. Taormina et al.*, 207 F. 2d 251; *N. L. R. B. v. Aldora Mills*, 180 F. 2d 580; *N. L. R. B. v. Retail Clerks International Association*, 203 F. 2d 165; *N. L. R. B. v. Louisville Refining Co.*, 102 F. 2d 678 (refusal in fact to meet and confer with Union members as representative of employees, colored also by Court implication of bad faith); *N. L. R. B. v. Darlington Veneer Company*, 236 F. 2d 85 (where the Court concluded "the Board was fully warranted in finding that the Company had failed to bargain in good faith" at p. 90).

representative of its employees, and with no other, with respect to matters not violative of any express provision of the Act, but rather admittedly legal to propose, legal to accept and legal to include in a contract, the employer can, under any theory, be deemed *per se* to have denied recognition under the Act to the designated bargaining representatives of its employees.

No such case is to be found and no such position is tenable under the Act and this Court's decisions in *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, and *National Labor Relations Board v. American National Insurance Company*, 343 U. S. 395.

**F. There Being No Question of Recognition Involved the Sole Issue is Whether or Not the Company's Counter-proposals Fell Outside the Bargaining Area of the Act.**

It is apparent from the foregoing that so far as any *statutory requirement* is concerned, full recognition was given by the Company and the Union acting as the exclusive representative of the Company's employees, each to the other. It must follow that the legality or illegality of the Company's counter-proposals, whether it be determined as a matter of law by some *per se* test, or as a matter of fact, flows from their appraisal in the light of the bargaining area requirements of the Act. The question before this Court, therefore, is whether or not, as the Board started out to determine, "the proposals are obligatory subjects of collective bargaining" within the bargaining area prescribed by the Act. No other question is presented.

### III. BOTH OF THE COMPANY'S COUNTER-PROPOSALS ARE INCLUDED WITHIN THE BARGAINING AREA PRESCRIBED BY THE ACT.

The theory of the Board, and of the Court of Appeals so far as concerns the preamble clause, that the Company's counter-proposals, as a matter of law, lay outside the bargaining area prescribed by the Act, flies squarely in the face of the following rules plainly stated by this Court:

- (1) "Congress provided expressly that the Board should not pass upon the desirability of the substantive terms of labor agreements. Whether a contract should contain a clause \* \* \* is an issue for determination across the bargaining table, not by the Board." *National Labor Relations Board v. American National Insurance Company*, 343 U. S. 395, 408-409; and
- (2) "Each case must turn upon its particular facts. The inquiry must always be whether or not under the circumstances of the particular case the statutory obligation to bargain in good faith has been met." *National Labor Relations Board v. Truitt Manufacturing Co.*, 351 U. S. 149, 153-154.

#### A. The Purpose of the Act is to Preserve Collective Bargaining Free from Substantive Governmental Interference, Whether by Congress, the Board, the Courts, or the States.

"The theory of the Act is that free opportunity for negotiation <sup>13</sup> \* \* \* is likely to promote industrial peace

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<sup>13</sup> "Under free collective bargaining, designating the terms and conditions of employment is a private matter for a union and a management to work out between themselves in whatever way they see fit and particularly without government interference.

"Substance has to be given to the rather formal statement just suggested. That can best be done by noting the three most important aspects of the joint dealings between labor and management that are worked out in free collective bargaining. They



and may bring about the adjustments and agreements which the Act in itself does not attempt to compel." *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45.

The Act "does not undertake governmental regulation of wages, hours, or working conditions. \* \* \* So far as the Act itself is concerned these conditions may be as bad as the employees will tolerate or be made as good as they can bargain for. The Act \* \* \* does not authorize anyone<sup>14</sup> to fix generally applicable standards for working conditions." (Emphasis supplied.) *Terminal Railroad Association v. Brotherhood of Railroad Trainmen*, 318 U. S.

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(Continued from preceding page)

are determinations of (1) the scope of the labor agreement, (2) negotiating procedures, and (3) substantive contract terms. All three aspects are vital parts of the relationship. Resolution of differences in each one of these areas is looked upon as a private matter to be worked out by a union and a management under a system of free bargaining. Legislation dealing with any one of these areas constitutes a substitution of government directive for collective bargaining." Dr. George Taylor, *Government Regulation of Industrial Relations*, p. 14 (New York, Prentice-Hall, Inc., 1948), p. 10.

"As I view the present scene, perhaps the greatest of all dangers to free collective bargaining is the proneness of both sides to seek the aid of government to give them the victory in their contests with each other." Presidential address by Edwin E. Witte, Chairman of the Department of Economics of the University of Wisconsin at the annual meeting of the Industrial Relations Research Association at Cleveland, Ohio, December 29, 1948.

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<sup>14</sup> "In collective bargaining, there is but one way—note, one way only—for determining the conditions of employment. That is by an agreement between the management and organized employees. \* \* \* The strike and the lockout have definite functions to perform. They are accepted devices for resolving the most persistent differences arising in an employment relationship where differences must be resolved by agreement." Dr. George Taylor, *Collective Bargaining in Defense Economy*, Annual Meeting of the Industrial Relations Research Association, Chicago, Illinois, December 28-29, 1950, p. 4.

1. 6, approved *National Labor Relations Board v. American National Insurance Company*, 343 U. S. 395, 402, footnote 8.

In its opinion in *National Labor Relations Board v. American National Insurance Company*, this Court emphasized the care which Congress has taken to insure that neither the Board nor the Congress itself should attempt to set "itself up as the judge of what concessions an employer must make and of the proposals and counter-proposals that he may or may not make" (p. 404). (Emphasis supplied.) In rejecting an effort by the House in the Hartley Bill to enact specific substantive definitions of the bargaining area, "the good faith test of bargaining was retained and written into § 8(d) of the National Labor Relations Act" (*Id.* p. 404).

Similarly, this Court has held that the states are without power to impose substantive controls over the bargaining, the enactment of which the Congress has been zealous to avoid. *International Union of United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O. v. O'Brien*, 339 U. S. 454.

**B. The Bargaining Area is not Susceptible of Precise Definition as a Matter of Law, but Rather Varies From Industry to Industry and Case to Case.**

The Court of Appeals, in holding that the limited no-strike clause fell within the bargaining area, recognized that:

"The bargaining area of the Act has no well-defined boundary. The phrase 'conditions of employment' has not acquired a hardened and precise meaning. Management and labor are now required to bargain collectively about issues which formerly were not considered as proper issues for inclusion in the usual bargaining agreement." (R. 516a, 517a.)

"Wages," "hours," "terms" or "conditions" of employment, and the "negotiation of an agreement" as used in the Act do not describe a static and confining bargaining area by which good faith bargaining may be circumscribed.<sup>15</sup> On the contrary, the Board and the Courts have always recognized their extension to a broad range of subjects limited only by good faith and the facts and circumstances surrounding the particular bargaining involved.

The term "wages," for example, has been interpreted not narrowly to refer to rates of pay, but broadly to include pensions and other benefits. *Inland Steel Co. v. National Labor Relations Board*, 170 F. 2d 247. The term "conditions of employment" has a "broader meaning than that perhaps spontaneously suggested by the term 'working conditions'." *Inland Steel Co.*, 77 N. L. R. B. 1, 7.

Collective bargaining is not restricted "to those subjects which up to 1935, had been commonly bargained about in negotiations between employers and employees." *W. W. Cross & Co., Inc. v. National Labor Relations Board*, 174 F. 2d 875, 878. Collective bargaining is "to be used irrespective of the fact that the specific differences to be adjusted had not previously been considered in the framing of collective bargains." *Inland Steel Co.*, 77 N. L. R. B. 1, 9. "Effective collective bargaining has been generally conceded to include the right \* \* \* to bargain about the excep-

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<sup>15</sup> "But as the parties always bargain within the context and history of their relationship, the question as to what should enter bargaining must be decided case by case, and rests with the parties. In other words, the content of bargaining must itself remain subject to bargaining rather than be governed by rigid rules laid down by others. The demand to negotiate about a particular subject at a particular time may lead to a compromise of the parties between this demand and other substantive demands." *Petshek, Research on Extent and Scope of Collective Bargaining*, at p. 229, Report of Fifth Annual Meeting of the Industrial Relations Research Association, Chicago, Illinois, December 28-29, 1952, p. 229.

tional as well as the routine \* \* \*." *Order of Railroad Telegraphers v. Railway Express Agency*, 321 U. S. 342, 347. "Common collective bargaining practice" and the "traditions of bargaining" of a particular industry or union must be considered in appraising the broad scope of bargainable subjects. *National Labor Relations Board v. American National Insurance Co.*, 343 U. S. 395, 407.

The Board itself has consistently recognized the bargaining practices not only of a particular industry but even of a particular employer.<sup>16</sup> Thus in *Matter of Weyerhaeuser Timber Company*, 87 N. L. R. B. 672, the Board said in footnote 1 at p. 673:

"We have previously rejected, with the approval of the courts, the similar argument that 'conditions of employment' has no broader meaning than that perhaps spontaneously suggested by the term 'working conditions,' and that it therefore only refers to the physical conditions under which employees are compelled to work rather than to the terms or conditions under which employment status is afforded or withdrawn. \* \* \* (We have) held that the lease of company-owned houses to employees, which apparently was done simply as a convenience for the employees, constituted a condition of their employment within the meaning of the Act." (87 NLRB 672, 673 n. 1.)

The relevance and importance of historical and industry bargaining practices, were emphasized by the Board in these words:

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<sup>16</sup> "In fact, the National Labor Relations Board generally has recognized some subjects as proper bargaining matter only after some unions and employers in previous cases had agreed to bargain on them." Petchek, *Research on Extent and Scope of Collective Bargaining*, at p. 229, Report of Fifth Annual Meeting of the Industrial Relations Research Association, Chicago, Illinois, December 28-29, 1952, p. 229.

"There is also evidence in the record that there has been collective bargaining in the industry with respect to other matters relating to room and board, such as health, certificates for cookhouse employees and bed-makers, proficiency of cooks, quantity and quality of food, cleanliness and capacity of bunkhouses, types of beds, the number of persons to eat at a table, and the number of persons that one waitress should serve." (87 NLRB 672, 677 n. 14.)

In answer to the employer's defense "that no lumber companies in the area have ever had contracts covering the price of either room or board," the Board summarily replied:

"the record discloses that there has been bargaining concerning the price charged for board and room *not only by other large lumber concerns in the States of Washington and Oregon, but also by the Respondent itself with another local of the Union at the respondent's Longview Branch.*" (87 NLRB 672, 676.)

**C. Under the Circumstances of This Case the Preamble Clause to Identify the Union in the Name of Its Local Fell Within the Bargaining Area Prescribed by the Act.**

1. The preamble clause directly affected working conditions and the negotiation of an agreement.

Experts in the field long have recognized that the relative importance of Local and International representatives of a Union, in given negotiations or in the administration of a contract, bears directly upon the relationship of an employer and his employees, and thereby upon the stability and character of actual working conditions. Thus, Mr. Joel Seidman of the University of Chicago, in discussing the importance with respect to working conditions of Local Union influence and predominance in contract administration, said:



"One of these [situations] is the plant of moderate size in which an industrial-type union operates, in which typically the officers work in the plant and do their union work on a spare-time or lost-time basis. \* \* \* Here the formal union meeting remains the official way of bringing membership needs and desires to the attention of union officers; but union stewards and top local officers work alongside their members, listening to their comments and complaints, and forming part of an informal plant society that strongly influences decisions made at the formal union meeting." Reports of the Fifth Annual Meeting of the Industrial Relations Research Association, Chicago, Illinois, December 28-29, 1952, at pp. 153-154.

At the same meeting Mr. Albert S. Epstein, representing the International Association of Machinists Union, suggested an example of how remote the International officials of a large industrial union may be from actual knowledge of the working conditions of a small plant in rural Ohio, such as that of the Company, when he said:

"A dramatic example of concentration is that of the UAW, which has almost one-third of the CIO's membership. Half of the UAW's membership is located in Michigan and half of that membership is centered in Detroit." (p. 234.)

No one with even a superficial knowledge of the practical facts of collective bargaining in industry can fail to know that whether or not a labor contract is negotiated and administered by Local Union representatives or International Union representatives, has a direct causal effect on the working conditions which will result in a plant covered by such agreement. Typical examples of situations where such effect on working conditions is pronounced are found in questions involving management's

right to subcontract work, or to make technological changes.<sup>17</sup>

Experienced bargainers know that not only the substantive terms of a labor agreement and the working conditions resulting therefrom, but also the very negotiation of the agreement itself, are substantively affected by whether, in the course of Union negotiations, the Union emphasizes representation by its Local, International, or intermediate representatives. An American labor leader has commented upon this phenomenon as follows:

"The most dramatic and obvious result of the shift to bigness has been in the collective bargaining process itself. \* \* \* There can be no doubt that there have been changes in the type of bargaining and in the content of the bargain. The Automobile Workers and the Steelworkers offer most obvious examples. \* \* \* As the process is removed further from local plants and local unions, the bargaining takes on a less personal character, and tends to become more of a pageant or drama. \* \* \* The role of the union negotiator himself has undergone subtle but fundamental changes. \* \* \* He may even be able to remove the uncertainty from management's position in private conversation, and to re-define his own functions as one of 'selling' a settlement to 'the people.'" George W. Brooks of the International Brotherhood of Pulp,

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<sup>17</sup> "There is no point at which the national and local leadership are likely to be more sharply differentiated in their opinions than on this issue. Local union members are always uneasy about, and usually opposed to, technological change although this opposition is not serious in periods of high level employment. The national union, on the other hand, is likely \* \* \* to understand that technological progress is always progress for the members as a whole and almost always for each of the members." George W. Brooks, *Reflections on the Changing Character of American Labor Unions*, at pages 42-43 of Reports of Meeting of Industrial Relations Research Association, Cleveland, Ohio, December 28-29, 1956.

Sulphite & Paper Mill Workers, *Reflections on the Changing Character of American Labor Unions*, pp. 39, 40, delivered at the meeting of Industrial Relations Research Association, Cleveland, Ohio, December 28-29, 1956.

It is clear that the view of Mr. Brooks has and must have its counterpart in management.<sup>18</sup> Since emphasis on Local Union representatives in the bargaining may produce "changes in the type of bargaining and in the content of the bargain," it must follow that when parties, in admitted good faith are bargaining about the name in which the Union should identify itself, they are discussing matters within the bargaining area of the Act affecting terms and conditions of employment and the negotiation of an agreement.

2. The Board's certificate cannot be held, as a matter of law, to foreclose bargaining concerning the way the Union will be named in a labor contract.

It is the Board's theory (Brief, p. 37), that the name it used in its certificate to identify the Union effectively excluded both the Company and the Union from the right

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<sup>18</sup> "For instance, it takes a brave labor lawyer today to assure his client that almost any subject is outside the area of required bargaining. Unions once confined their bargaining under a quite limited concept of wages, hours and working conditions. This concept has constantly broadened.

"This trend has at times alarmed management. For instance during the 1945 Labor-Management Conference the labor delegates refused to enter into any agreement regarding matters which should be protected as management functions. The labor delegates said: 'The experience of many years shows that with the growth of mutual understandings the responsibilities of one of the parties today may well become the joint responsibility of both parties tomorrow.'" William B. Barton, General Counsel, United States Chamber of Commerce, *Major Trends in American Trade Union Development 1933-1955*, at page 38, as reported in the Annual Proceedings of Industrial Relations Research Association, 1955 meeting at New York City.

to engage in free collective bargaining about the way in which the Union should be identified in any labor contract. This theory is inconsistent with the purposes of the Act, and is in derogation of the designation of a representative actually made by the Company's employees.

Nowhere does the Act provide that the Board's certificate shall serve as a substantive limitation upon the right of the Company and the Union *freely* to negotiate within the bargaining area which it prescribes. Since the preamble proposal involves no question of recognition, the compulsion of the Act upon Company and Union to bargain about "the negotiation of an agreement," as well as about "terms and conditions of employment," clearly negates such concept. The Board's contrary conclusion, then, is just another example of an effort to amend the Act by the application of administrative gloss.

Nowhere in the statute is the right given to the Board to designate or select the employees' representatives for the purpose of collective bargaining. By Section 9(a) of the Act such right is the exclusive perquisite of the employees. "Representatives designated or selected \* \* \* by a majority of the employees \* \* \* shall be the exclusive representatives of all the employees."

The Board is empowered to do no more than perform the act of providing an identifying name for the representative so *designated* by the employees. The Board's power is, only, to "direct an election by secret ballot and \* \* \* certify the results thereof." The real question therefore must be—what was the representative actually designated by the employees?

Immediately preceding the representation election, and as an inducement to the Company's employees to select the Union as their bargaining representative, they were told by the Union:

"You will have your own charter, your own Local Union, your own contract and seniority, and officers elected from your own plant. We, in the U.A.W.-C.I.O. are proud of the autonomy and independence of our Local unions working for our general benefit within the framework of the U.A.W. and the C.I.O." (Resp. Ex. 2, R. 114a.)

The ballot by which the Company's employees expressed their preference did not even contain the name, "International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O." as a bidder for their suffrage. The ballot designated the Union merely as "U.A.W.-C.I.O." This designation was approved by the Union and the Board, and was incorporated in the Consent Election Agreement pursuant to which the Board conducted the election. (G. C. Ex. 3(a), R. 28a-30a.)

The Board's naming the Union in its International name cannot be deemed *ipso facto* to have restricted the designated Union, i.e., U.A.W.-C.I.O., to its International representatives to the exclusion of any other representatives it might agree to, or to a contract identification of the Union only in its International name.

It has long been the established rule of the Board that the only function of its certificate "is to ascertain and certify to the parties the name of the bargaining representative," and that in a representation proceeding it is not the Board's "function to direct, instruct or limit that representative as to the manner in which it is to exercise its bargaining agency." *General Aniline & Film Corp.*, 89 N. L. R. B. 467, 468; *St. Regis Paper Company*, 104 N. L. R. B. 411; *Bendix Products Division, Bendix Aviation Corporation*, 77 N. L. R. B. 1372; *Wilson Packing & Rubber Co.*, 51 N. L. R. B. 910.



If further emphasis were needed for the proposition that the employees designated the U.A.W.-C.I.O. as a whole and not merely its International representatives, it is to be found in the following provision of the Union's own constitution, which presumably was known to the employees:

"No \* \* \* International officer or International representative shall have the authority to negotiate the terms of a contract or any supplement thereof with any employer without first obtaining the approval of the Local Union." (G. C. Ex. 61, R. 91a.)

Under the facts of this case, it is to close one's eyes to reality to accept the narrow legal effect ascribed by the Board and the Court of Appeals to the particular words which the Board happened to use in its certificate.

3. The name in which a Union shall be identified in a labor contract has been accepted as a subject within the bargaining area by this Union and by employers and unions generally.

The Union, not the Company, opened the bargaining about preamble identification of the Union by a description different from the Board's certificate. The Union proposed that it be identified in both "international" and "local" names, although the Board had used only the former. The Union *never* proposed any description or identification of itself which did accord with the Board's certificate.

This case does not mark the Union's first bargaining on this subject. This Union was accustomed to agree to describe itself in a variety of ways in labor contracts. In its contracts with other employers, the Union has sometimes agreed to describe itself in its "international" name, sometimes in its "local" name, and sometimes in both (R. 377a, 379a, 381a, 382a-383a; see also Bureau of National

Affairs, *Collective Bargaining Negotiations and Contracts*, Sec. 20:301).

The Company's representative at the bargaining table in this case had previously had personal experience with this "common collective bargaining practice"<sup>19</sup> of this Union. At the Pesco Division of Borg-Warner, the Board's certificate identified the Union simply in the name of its Local Union No. 363. But there, the *same Union negotiator*, in bargaining with the same negotiator who represented the Company here, insisted that the Union be identified in both "international" and "local" names, notwithstanding the Board's certificate. In that instance the Union's demand for departure from the Board's description was so insistent that the Company was forced to capitulate to avert a strike (R. 247a, 313a, 521a).

The "practice" of the Union to bargain about this subject only reflected the generally recognized interest of employers and unions in the subject of how a union shall be identified or described in a labor contract, and their general practice to bargain about it.<sup>20</sup>

The practice varies widely. The Steelworkers Union, for instance, prefers to identify itself only in its "international" name. The Teamsters and Operating Engineers,

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<sup>19</sup> *N. L. R. B. v. American National Insurance Co.*, 343 U. S. 395, 407.

<sup>20</sup> "Some employers prefer to have the national or international union made a party to the contract together with the local union in the belief that enforceability of the agreement is thereby strengthened. At the same time, parent organizations sometimes insist on being made party to contracts negotiated by their locals in order to retain a proprietary interest in the contract under any conditions. However, the passage of the 1947 Labor Law has inspired some international unions to avoid becoming party to contracts lest they then become liable for court damages in the event of violations." (Bureau of National Affairs, *op. cit.*, Vol. 2, Sec. 70:11.)

on the other hand, follow a preference for the "local" name or some hybrid such as "Central States Drivers' Council." (See, e.g., Bureau of National Affairs, *op. cit.*, Sec. 27:753; CCH Labor Law Reporter, Vol. 5, Par. 59,908.)

The point is that, long before this case arose, both sides of the table, in the course of free collective bargaining, had placed the manner in which unions are to be identified in labor contracts within the bargaining area of the Act. Whether potential liability under Section 301 of the Act, or pattern bargaining, or encouragement of local responsibility, or predominance of national union policy, or any one of many other considerations, influences one party or the other to prefer a "local" to an "international" description, or vice versa, or both, the realistic fact of modern collective bargaining is that employer and union bargainers commonly bargain about this subject.<sup>21</sup>

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<sup>21</sup> This, like many other bargaining subjects, is related to the administration of the contract. It is a rare negotiation that does not involve this and many similar subjects such as: (i) the size and composition of bargaining and grievance committees. (ii) Whether or not and if so upon what conditions "international" union representations will have access to the plant, or participate in the grievance procedure. (iii) Whether or not and if so on what terms an employer will enforce compulsory union membership, or check off union dues, or grant leaves of absence for Union local or international business, or give "super-seniority" to union officers or representatives, or permit or pay for union meetings, processing of grievances, etc. on company time, or provide union bulletin boards in the plant, or permit distribution of union literature in the plant, or exempt the union from liability for strikes or violations of the labor contract. See, for example, G. C. Ex. 13, *Labor Contract*, pp. 4, 5, 6, 12, 21, 24; G. C. Ex. 4, pp. 1, 2, 9-11, 13, 15-16, 22-26; Bureau of National Affairs, *Contract Clause Finder*, Sections 60:124-127, 62:301-302, 361-364, 65:241-245, 301-304; Bureau of Labor Statistics, *Bulletins* No. 908-6, p. 32 (1948); No. 908-12, pp. 31-32, 35-36, 44-45 (1949); No. 908-13, pp. 2, 7, 76-77 (1949); No. 908-19, pp. 2-11-12 (1950).

**D. Under the Circumstances of This Case, the No-strike Counter-proposal Fell Within the Bargaining Area Prescribed by the Act.**

This Brief (pp. 22-31) has already demonstrated that the no-strike counter-proposal did not involve any question of recognition. There remains the Board's claim, rejected by the Court below and by the Court of Appeals for the Seventh Circuit in *Allis-Chalmers Mfg. Co. v. National Labor Relations Board*, 213 F. 2d 374, that the no-strike clause was outside the bargaining area prescribed by the Act. This claim, too, is opposed to the Act, the decisions, and the realities of collective bargaining.

1. **Absolute no-strike clauses fall within the bargaining area and no provision of the Act prohibits conditional no-strike agreements.**

Both the Board and this Court have recognized that no-strike clauses unconditionally prohibiting all strikes clearly fall within the bargaining area of the Act. *Shell Oil Co.*, 77 NLRB 1306; *Bethlehem Steel Co.*, 89 NLRB 341; *National Labor Relations Board v. American National Insurance Co.*, 343 U. S. 395, 408, note 22. Such holdings clearly effectuate the purpose of the Act to avoid or minimize "strikes and other forms of industrial strife or unrest." If Union agreements to preclude strikes entirely effectuate the purpose of the Act, how can a Union agreement which only attaches conditions to the Union's right to call a strike be said to frustrate it? <sup>22</sup>

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<sup>22</sup> "It is the purpose and policy of this Act \* \* \* to protect the rights of individual employees in their relations with labor organizations \* \* \*." (Sec. 1 (b) Labor Management Relations Act.) This was recently referred to by Boyd Leedom, Chairman of the National Labor Relations Board, as one of the Act's "often overlooked and sometimes forgotten purposes." Address, Missouri Bar Association, September 26, 1957.

The qualified no-strike clause proposed by the Company was one which this Union and many other unions had recognized as proper for inclusion in collective bargaining agreements long before this case arose (R. 32a, Resp. Ex. 29-36, R. 145a-149a). By the Company's counter-proposal the Union's freedom to call a strike was not eliminated as it would have been under an unqualified no-strike clause. Rather, the Union was left *free to call a strike* once it had complied with the specified procedure.

It is not claimed by the Board that the Company's counter-proposal "is an illegal contract term" or "violative of an express provision of the Act." Cf. *N. L. R. B. v. American National Insurance Co.*, 343 U. S. 395, 405, note 15. Rather, the Board seeks here also to apply a *per se* test of illegality completely *aliunde* any provision of the Act.<sup>23</sup>

2. The counter-proposal was a no-strike clause which sought only Union agreement that no strikes would be called until a specified procedure, ending with a vote of the employees, had been followed.

The Company's counter-proposal was only a no-strike clause, despite the Board's epithetical argument which characterizes it as a "ballot" clause. The clause was contained in a proposed Article which dealt with lockouts and strikes. In material part, it provided simply that:

"The Union agrees that there will be *no strike* \* \* \* with respect to any (matter upon which an impartial arbitrator has no jurisdiction to rule) *until the procedure hereinafter set forth in this Article has been exhausted.*" Sec. 5.5(a); G. C. Ex. 11, R. 59a; Emphasis added.

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<sup>23</sup> The failure of Congress in 1947 to require a vote of employees before a strike, contrary to the Board's contention (Brief, pp. 20-22), proves simply that Congress thought this was a matter better left for solution by free collective bargaining.



The remainder of the Article set forth the procedure to be followed *before a strike could be called with respect to any issue*, including a strike over the issue whether or not the agreement should be amended, modified or terminated (G. C. Ex. 11, R. 59a-60a).

This Article had no application whatever unless the Union desired to call a strike. No procedure was required and no vote of employees was exacted under any other circumstances. The Company never claimed anything more for the no-strike counter-proposal, never sought Union agreement to anything more, and was never understood by the Union to be seeking anything more than a qualified no-strike clause. (See G. C. Ex. 9, No. 3, R. 55a; Resp. Ex. 18, R. 130a; R. 252a-263a, 349a-350a, 355a-357a.)

The Union was left free to take any *position* on any issue, with or without consultation with the employees, as the Union might determine. It was limited only in respect of its freedom to call a strike. For that matter, even if employees voted *not* to strike, the Union was *still free* to take any position on the issue it chose. The Union was even free to call a strike contrary to the vote. Nothing in the Company's counter-proposal bound the Union to abide by the result of the vote in any way.

The Company's qualified no-strike clause left the Union free to follow any *procedure* of its own it might choose to follow. It merely required that the procedure specified by the Company be followed too. The Union was completely free, for example, to arrive in its own membership meeting at the conclusion to strike and thereafter to make this known and recommended when the secret ballot was taken among all employees.

3. The Board's claim that the Counter-proposal interferes with internal Union affairs is without legal significance under the facts of this case.

The Board's condemnation of the no-strike counter-proposal (Brief, pp. 29-30) on the ground that it interfered with internal Union affairs (whatever this means) is without legal significance here. The Company already has shown that "recognition" was not involved in the counter-proposals. The Act does not make either the Union's or the employer's "internal affairs" as such immune from bargaining.

The counter-proposal could not involve internal union affairs unless the Union agreed to it. The Board's contrary suggestion ignores the Union's statutory right simply not to agree. The Company had no way to impose its counter-proposal on the Union if the Union chose not to accept it. In essence, the Company only proposed in good faith that the Union agree not to call a strike during the life of the labor contract without first submitting the question of strike or no strike to the employees. How and whether the Union decided to agree to this proposal was left entirely to the Union.

In any event, the extent, if any, to which the counter-proposal interfered with internal Union affairs, even after the Union's agreement to it, does not take the question out of the bargaining area of the Act any more than does the total interference which results from Union agreement to an unconditional no-strike clause. Whatever mechanics, if any, the Union may have for calling a strike or polling its constituents, an unqualified no-strike clause places a total restraint on the use of any "internal procedure" so far as strikes are concerned. Both the Board and this Court have recognized that the total interference resulting from

an unqualified no-strike clause does not remove the subject from the bargaining area of the Act.

The Company's qualified no-strike clause left the Union free to follow any procedure of its own it might choose to follow. It merely required that the procedure specified by the Company be followed too. The Company did not propose to intrude in the Union's internal affairs, and made this clear to the Union in the course of the bargaining. The Union, for its part, was not really concerned about this for it proposed to accept the Company's no-strike clause if the Company would agree to compulsory Union membership for all employees (R. 353a, 358a-359a).

The Board's condemnation (Brief, p. 29) that the no-strike counter-proposal tested "the statutory representative's power to call a strike" may or may not be an accurate statement of the consequence but on either view is also without legal significance. The naked refusal of an employer in good faith to grant a wage increase "tests" the Union's "power to call a strike." Any failure or refusal of an employer in good faith to meet any Union demand "tests" the same power. This is the essence of the free collective bargaining fostered by the Act.

4. No-strike provisions, qualified by a secret ballot, had been placed within the bargaining area of the Act by this Union and by employees and unions generally before this case arose.

On the subject matter of strikes, too, the Union *not* the Company opened the bargaining. From the Union's first proposal to the end of the bargaining, the issue was *what*, not *whether*, limitations should be placed on the Union's freedom to call a strike.

This, too, was consistent with the Union's "common collective bargaining practice," both at the Pesco Division of Borg-Warner and with other employers as well. In fact, the Union's proposed no-strike clause was patterned after its agreement at Pesco, and the Company's counter-proposal was patterned after the Union's no-strike clause at Allis-Chalmers (G. C. Ex. 4, p. 26; R. 221a, 319a-321a).

This Union's no-strike agreement with Allis-Chalmers, for example, was even more sweeping than the no-strike clause proposed by the Company. There the Union had agreed that there would be no strike, even after the labor contract had expired, unless there had been a secret ballot by the employees and unless the employees had approved the strike. (The Union there had gone even farther than this, because it had also agreed that elections of local union officials would be conducted by secret ballot of union members on the company's premises.) See R. 378a-380a.

As in the case of the name by which the Union shall be identified in the contract, a no-strike clause like the Company's counter-proposal is anything but a stranger to the area of collective bargaining commonly covered today by representatives of employers and employees. To name only a few, the Auto Workers (both AFL and CIO), the Farm Equipment Workers, the Electrical Workers (both CIO and IND.), the Electricians, the Patternmakers, the

Firemen and Oilers, the Plant Guard Workers, the Packinghouse Workers, the Furniture Workers, the Shoe Workers, the Carpenters, and the Woodworkers, have agreed upon no-strike clauses which required a secret ballot (*and in some cases approval*) by the employees before the Union was free to strike. (See R. 382a, Resp. Ex. 29-36, R. 145a-149a.)<sup>24</sup>

### CONCLUSION.

"The Act does not compel any agreement whatsoever between employees and employers \* \* \* The theory of the Act is that the making of voluntary agreements is encouraged \* \* \* by imposing on labor and management the mutual obligation to bargain collectively \* \* \* (The) Board may not, either directly or indirectly, compel concessions or otherwise sit in judgment upon the substantive terms of collective bargaining agreements. \* \* \*

"The Board offers in support of the portion of its order before this Court a theory quite apart from the test of good faith bargaining prescribed in Section 8(d) of the Act, a theory that (the Company's) \* \* \* bargaining for (its preamble and no strike clauses) as a counter-proposal to the Union's demand (on the same subjects) \* \* \* was, 'per se,' a violation of the Act.

"Counsel for the Board do not contend that (either of the Company's counter-proposals) \* \* \* is an illegal contract term. As a matter of fact, a review of typical contract clauses collected for convenience in drafting labor

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<sup>24</sup> " \* \* \* A review of typical contract clauses collected for convenience in drafting labor agreements shows that \* \* \* clauses similar in essential detail to the clause proposed \* \* \* have been included in contracts negotiated by national unions with many employers." *NLRB v. American National Insurance Co.*, 343 U. S. 395, 405.



agreements shows that \* \* \* clauses similar in essential detail to the (clauses proposed by the Company) \* \* \* have been included in contracts negotiated by national unions with many employers \* \* \* (It) is manifest that bargaining for (such clauses) is common collective bargaining practice.

"The Board considers that employer bargaining for (such clauses) \* \* \* is an unfair labor practice because it is 'in derogation of' employees' statutory rights to bargain collectively as to conditions of employment. Conceding that there is nothing unlawful in including (the Company's counter-proposals) \* \* \* in a labor agreement, the Board would permit (the Company) \* \* \* to propose (them) \* \* \*. But the Board would forbid bargaining for any such clause when the Union declines to accept the proposal, even where the clause is offered as a counter-proposal to a Union demand \* \* \*.

"If the Board is correct, an employer violates the Act by bargaining (for such clauses) \* \* \* without regard to the traditions of bargaining in the particular industry or such other evidence of good faith as the fact in this case that (the Company's clauses were) \* \* \* offered as a counter-proposal to the Union's (proposals on the same subjects) \* \* \*. The Board's argument is a technical one for it (must be) \* \* \* conceded that (the Company) \* \* \* would not be guilty of an unfair labor practice if, instead of (making its counter-proposals) \* \* \*, it simply refused in good faith to agree to the Union proposal \* \* \*.

"The Board was not empowered so to disrupt collective bargaining practices \* \* \*. The duty to bargain collectively is to be enforced by application of the good faith bargaining standards of Section 8(d) to the facts of each case rather than by prohibiting all employers in every in-

dustry from bargaining \* \* \* altogether (for clauses like the Company's counter-proposals)." *NLRB v. American National Insurance Co.*, 343 U. S. 395, 402, 404, 405, 407, 408, 409.

"Accepting \* \* \* the finding (and concession) \* \* \* that (the Company) bargained in good faith," the judgment in No. 53 should be affirmed and the judgment in No. 78 should be reversed.

Respectfully submitted,

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**AUG 23 1957**

**JOHN T. FEY, Clerk**

**IN THE**  
**SUPREME COURT OF THE UNITED STATES**  
**- OCTOBER TERM, 1957**

**NATIONAL LABOR RELATIONS BOARD,**  
*vs. Petitioner*  
**WOOSTER DIVISION OF BORG-WARNER**  
**CORPORATION**

**WOOSTER DIVISION OF BORG-WARNER**  
**CORPORATION,**  
*vs. Cross Petitioner*  
**NATIONAL LABOR RELATIONS BOARD**

**ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF**  
**APPEALS FOR THE SIXTH CIRCUIT**

**BRIEF FOR THE INTERNATIONAL UNION, UNITED**  
**AUTOMOBILE, AIRCRAFT & AGRICULTURAL IM-**  
**PLEMENT WORKERS OF AMERICA (UAW-AFL-**  
**CIO) AS AMICUS CURIAE.**

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IN THE  
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Nos. 53-78

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
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AUTOMOBILE, AIRCRAFT & AGRICULTURAL IM-  
PLEMENT WORKERS OF AMERICA (UAW-AFL-  
CIO) AS AMICUS CURIAE.**

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**Interest of Amicus Curiae**

The International Union, United Automobile, Aircraft &  
Agricultural Implement Workers of America (UAW-AFL-  
CIO), hereinafter referred to as the International, filed



8 (a)(1) and (5) unfair labor practice charges on April 7, 1953, initiating the issuance of the complaint in this matter. An amended charge was filed on July 1, 1953 adding 8 (a)(3) violations. The National Labor Relations Board, hereinafter referred to as the Board, found both 8 (a)(1) and 8 (a)(5) violations, however it rejected a Trial Examiner's finding of 8 (a)(3) violations on the ground that he was in error in concluding that 8 (a)(3) violations for failure to reinstate were supported by a finding of an unfair labor practice strike caused by the employer's insistence on certain contract proposals found violative of Section 8 (a)(5). The Board, contrary to the Trial Examiner, held that the strike was caused by the failure of the parties to reach agreement on economic issues in dispute. The Board's failure to find 8 (a)(3) violations was the subject of a petition for a review filed by the International. In respect to this phase of the case the Court of Appeals remanded the case to the Board stating:

"The union contends that in any event the unfair labor practice of the company was a contributing cause of the strike which as a matter of law requires that the strike be treated as an unfair labor practice strike. That such is the legal consequence of such a factual situation appears settled. (citations) The burden rested upon the company to show that the strike would have taken place even if it had not insisted upon its recognition proposal. (citation) We do not construe the findings of the Board as including an express finding on this factual issue. Counsel for the Board apparently so concedes by his statement in the brief that 'the Board in effect found' such to be the case. We agree with counsel for the union that the Board's findings are inadequate with respect to this issue which is controlling on the question of reinstatement. The

union also challenges the validity of the agreement under which reinstatement was carried out. On these issues the case is remanded to the Board for further findings and rulings."

Thus, the sustaining of that part of the lower court's remand which may be based upon the findings of 8(a)(5) violations which are the subject of this appeal, will depend upon this court's sustaining the findings. Moreover, if the Board's findings of the 8(a)(5) violations are not sustained, the status of the International as a bargaining representative under the National Labor Relations Act will be imperiled and the measure of its authority and its identity to act as representative of employees will be determined by the magnitude of an employer's bargaining power. Moreover under the guise of collective bargaining the internal management of a labor union's affairs will be exposed to employer interference and domination and the employer, by the possession of superior bargaining power, may dictate a union's mechanics for strike.

### **Summary of Argument**

These appeals involve the legality of so-called "recognition and employee ballot clauses", which by economic pressure an employer was able to fix in a contract. The recognition clause excluded the International as a party to the agreement. The employee ballot clause, as finally embodied in the contract, provided for the "settlement of all disputes that may arise" between the parties through a procedure which provided for "a clear definition of the issue or issues, officially made known to all employees in the bargaining unit;" and "an opportunity for all employees in the bargaining unit to vote, by secret, impartially supervised, written ballot, on whether to accept or reject the Company's last offer, and on any subsequent offers made." Such

ballot was to be taken on company premises. The clause further provided "that if a majority of the employees in the bargaining unit reject the company's last offer, and the company makes a subsequent offer within 72 hours from the time the results of the election are known, another secret, impartially supervised, written ballot will be taken within the following 72 hours." Thus the submission of "subsequent offers" could continue *ad infinitum*. In addition to the above stipulations the ballot clause contained a further provision "that the question of whether or not this agreement is to be amended, modified or terminated is one of the issues subject to vote by such a secret, impartially supervised written ballot." The clause further provided that the foregoing procedure must have been exhausted before the engagement of strike. (See Intermediate Report R. 399a, 400a)

While we support the Board's findings of 8 (a)(5) violations and the reasoning employed by the Board to substantiate its conclusions, nevertheless we believe the Board should have also concluded that the employer's demands for the recognition and employee ballot clauses was *ab initio* unlawful and was illegal *per se* because:

1. The employee ballot clause was a direct interference with the administration of a labor organization in violation of Section 29 U.S.C. 158 (a)(1) and (2) of the Act in that among other things such demand was in effect a demand for an amendment to the Constitution of the International, the certified bargaining agent, by which the employer usurped the right of the International to conduct its own internal affairs without employer interference or domination.

2. The employee ballot clause was a dilution of the authority of the certified bargaining representative in that it transferred bargaining authority to individual

employees in deragation of the authority conferred by the Act upon the certified bargaining representative selected by a majority of the employees to act exclusively on behalf of *all* employees.

3. The employee ballot clause eliminated the International as the bargaining representative over matters involving the final settlement of disputes and grievances, strike resolutions and the amendment, modification and termination of a labor agreement and interfered with the right of the employees to freely select their bargaining agent.

4. The employee ballot proposal discouraged membership in a labor organization in that it delegated to non-members authority to make final decisions in respect to vital subjects for collective bargaining. It reserved to the minority, rights in connection with collective bargaining which are repugnant to the scheme of majority determination.

5. The employee ballot proposal required the involuntary surrender of the International's right to full representative status and required said union to delegate to other than the certified bargaining agent, bargaining authority which is imposed on it by the statute (29 U.S.C. 159 (a)) which it may not delegate except in terms of the statute.

6. The employee ballot clause, which provided for the submission of certain collective bargaining matters to *all* employees for their action imposed upon those employees who may have desired to refrain from union activities participation in collective bargaining in a manner other than that authorized under Section 8 (a) (3), 29 U.S.C. 158 (a) (3) and in contravention of 29 U.S.C. 157 and 158 (a) (1).

7. The employee ballot clause is a derogation of the employer's duty to bargain in conformity with Sec-

tion 8 (d), 29 U.S.C. 158 (d), in that Section 8 (d) requires an employer to bargain with "the representative of the employees" in respect to "any question arising" under an agreement, whereas the ballot clause provides for bargaining in respect to the adjustment of disputes and grievances, resolution of strikes and the amendment, modification and termination of the agreement directly with the employees.

8. The recognition clause provided for the choosing of the bargaining representative by the employer in derogation of the right of employees to choose their own bargaining agent and eliminated the International as bargaining agent.

9. The recognition clause was a refusal to bargain with the certified bargaining representative and was a denial of the representative status of the certified bargaining representative.

10. The recognition clause was the negotiation of the "parties to the agreement" which are fixed by statute rather than the "terms of the agreement."

For these reasons we contend that the employee ballot clause is an *illegal contract term* and comes within the class of cases noted by this court in *National Labor Relations Board v. American National Insurance Company*, 343 U.S. 395, Footnote 15, Page 405.

### Argument

The employee ballot clause measured by the proscriptions of the Act is clearly an illegal contract term. 29 U.S.C. 158 (a) (2) renders unlawful an employer's domination or interference with the administration of a labor organization. This is also true of a contract procured by domination. *National Labor Relations Board v. Pacific Greyhound Lines*, 106 F. 2d 867 (CA-9) (reversed on other



grounds 303 U.S. 272). Whether such domination or interference is effected by contract as in this case or otherwise, is irrelevant since a contract is not a defense against the illegality of an act condemned by the statute. *Radio Officers' Union v. National Labor Relations Board*, 347 U.S. 17, 47. In the instant case the employer by the use of economic pressure was able to foist upon a union an employee ballot clause which provided a different mechanics for the settlement of disputes and grievances, resolution of strike and the amendment, modification or termination of the contract than was provided in the International's Constitution. (See General Counsel's Exhibit No. 61 and 62, Record 86a to 99a) The ballot clause was a device whereby the International's Constitution was changed thereby enabling the employer to appeal directly to its employees, both members and non-members of the union. If a bargaining representative, who is confronted with superior bargaining power, must succumb as a matter of law (which the court below held) to an employer's dictation of the management of its internal affairs in connection with the settlement of disputes and grievances, strike resolution or the amendment, modification or termination of its contract, a new field for employer exploitation has been opened under the guise of collective bargaining; and "industrial strife or unrest" will be fostered. What self-respecting union will surrender its right to dictate its own mechanics for strike, unless, as in this case, it is driven to the wall. As demonstrated by the prolonged strike in the instant case, negotiations which embrace an interference with the internal affairs of a labor organization or the extent of its bargaining authority do not contribute to the minimizing of labor disputes in interstate commerce, one of the basic objectives of the Act. Thus the effect of the lower court's decision is crystal clear—the control of a union's internal affairs must become subject to the economic power of an employer to sub-

stitute its will for that of the union. Moreover, if this power is without limitation, the union becomes a potential impotent bargaining implement. Weak unions must become the pawns of employers and the protection afforded by the Act to employees to be represented by a collective bargaining agent of their own choosing has been nullified. This court has recognized that an employer dominated union may be an effective means of obstructing the employees' choice of their own representative. *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U.S. 261, 266. Moreover, it is significant that a union of the magnitude of the International was finally forced to the wall and in the end a contract fixing certain mechanics of internal operation, contrary to the International's Constitution, was made effective by the employer. The Board lately in the case of *Nassau-Suffolk Contractors Association*, 11 NLRB No. 19, 40 LRRM 1146, has recognized that the "problems of internal union management or government must be resolved by the members themselves."

On the other hand, if the area of collective bargaining is to be expanded so that an employer may demand the submission of certain collective bargaining subjects directly to its employees for disposition, it would appear to follow that a similar clause submitting like questions to the stockholders of the employer could be demanded by a union. We find nothing in the Act which would indicate that Congress intended to open up for industrial conflict, subjects which concern the internal administration of either management or labor. Had Congress intended to provide for the submission of an employer's last offer to all the employees in the bargaining unit, it well knew the method, since in Section 207 (b) 29 U.S.C., 179 (b) Congress provided in cases of national emergency that the National Labor Relations Board take a secret ballot of employees.

to determine "whether they wish to accept the final offer of settlement" made by their employer. Clearly the mechanics for the consideration of an employer's last offer was left to the sole discretion of the bargaining representative and was not a subject over which it was intended an employer should have any economic control.

In Volume 79, Part 3, Page 2372, Congressional Record; Seventy-Fourth Congress, First Session, Senator Wagner in discussing the purposes of the Act said:

"It means simply that the majority may decide who are to be spokesmen for *all* in making agreements concerning wages, hours and other conditions of employment." (Italics ours)

From this language it is clear that the scheme of the Act is to afford to the employees a spokesman who will be designated by a majority of the employees and will speak for *all*. In this respect a bargaining representative not only has a responsibility to those he represents but also is the authority to meet that responsibility. This authority contemplates the exercise of discretion. *Ford Motor Company v. Huffman*, 345 U.S. 330, 339. The ruling of the court below requires the union to bargain with the employer over how much of its statutory authority and discretion it may exercise itself and how much it shall be required to delegate to the employees whom it represents. Logic dictates that if a union were to delegate by contract with an employer *all* of its authority as bargaining representative to the employees whom it represents; it would have been eliminated as the bargaining representative during the period of the contract. The employee ballot clause is clearly an elimination of the International as the bargaining agent, since during the period of the contract and *thereafter* for as long as a majority of the employees vote against the modification, amendment or termination of the contract,

the International is eliminated as the bargaining agent of the employees in respect to the final settlement of disputes and grievances, strike resolution and the modification, amendment and termination of the agreement. Such an elimination of the International as the bargaining agent is not unlike the elimination of the bargaining agent in the unlawful contracts referred to in *National Licorice Company v. National Labor Relations Board*, 309 U.S. 350, 360. As in that case the contract clause in the instant case was a means adopted to "eliminate the union as the collective bargaining agency of its employees." Moreover the clause was also an unlawful attempt to "go behind the designated representatives, in order to bargain with the employees themselves." *Medo Supply Photo Corp. v. National Labor Relations Board*, 321 U.S. 678, 685. Indeed the "complete loyalty" demanded of a bargaining representative, *Ford Motor Company v. Huffman*, *supra*, negates the idea that any of a bargaining agent's exercise of discretion may be gated to others.

The National Labor Relations Board has established the principle that a contract which provides for the exclusive control of seniority in the hands of a union is an unfair labor practice. *Pacific Intermountain Express*, 107 NLRB 836. This principle was affirmed in *Pacific Intermountain Express v. National Labor Relations Board*, 225 F. 2d 343 (CA-8) and *National Labor Relations Board v. Dallas General Drivers*, 228 F. 2d 702 (CA-5). The ground for such illegality was that such provision "tends to encourage membership in the union." The Act bans both encouragement and discouragement. A condition of employment which permits a non-union member to exercise discretion in connection with the settlement of disputes, strike resolution and the modification, amendment and termination of contracts, would tend to discourage membership in a labor organization since there would be small recompense

in his becoming a member of the union if non-members were permitted to participate in regard to these "vital" subjects of collective bargaining. The foregoing cases therefore are authority for holding the ballot clause illegal.

In *National Labor Relation Board v. Pecheur Lozenge Company*, 209 F. 2d 393, 403 (CA-2) the court held that an employer may not condition his statutory duty to bargain upon the abandonment of a strike. The realities of the industrial world indicate that there is no difference between collective bargaining conditioned upon the abandonment of a strike and collective bargaining conditioned upon a delegation of the right to strike to other than the statutory agent. In either case the bargaining agent abandons the right to strike. Indeed this court recognizes that the right to strike may not be bargained away unless "*the selection of the bargaining representative remains free.*" *Mastro Plastic Corporation v. Labor Board*, 350 U.S. 270, 280. The surrender of the union's right to strike in the instant case was conditioned on the abrogation of employees freedom to select the bargaining agent to act for them in the premises. Rather than the employees freely selecting their bargaining agent to act for them in these matters, the employer by superior bargaining power selected it for them. In fact, the employee ballot clause deprives the employees of the right to designate an agent to bargain for them not only in respect to the resolution of strikes but also the final settlement of disputes, or the amendment, modification or termination of the contract. As to these subjects the employees must refrain from utilizing their bargaining agent. In this respect it is not unlike the case of *National Labor Relations Board v. Vincennes Steel Corporation*, 117 F. 2d 169, 172, which struck down a proposed plan "which binds the employees to refrain from requesting a raise in wages," on the ground that "It deprives the employees of the right to designate an agent to bargain with reference thereto."



The cases of *National Labor Relations Board v. Corsicana Cotton Mills*, 178 F. 2d 344 (CA-5) and *National Labor Relations Board v. Darlington Veneer Company*, 236 F. 2d 85 (CA-4), are authority for reversing the lower court's decision. In the *Corsicana* case the employer demanded clauses similar to the clause in the instant case. The clauses provided that all employees of the company, whether they belonged to the union or not, must be given notice of union meetings. A further requirement was that "no decision of the union as the bargaining agent shall be determined except on majority vote of all the employees who attend such meeting." The court held these clauses "withheld recognition from the union as bargaining agent." In the *Darlington Veneer Company* case the company demanded clauses which required that the proposed contract was to be ratified by a majority of the employees in the bargaining unit by secret ballot and was to be nullified in the event over 50 percent of the employees revoked their checkoff authorizations. Since the employee ballot clause provides that the contract shall continue until such time as the majority of the employees authorize a modification, amendment or termination of the contract, it would appear therefore as in the *Darlington Veneer* case, the term of the contract is dependent upon other than the decision of the bargaining agent. Moreover, under the employee ballot clause, an amended or modified contract could not become effective until ratified by a majority of the employees in the bargaining unit.

The court below cited *Allis-Chalmers Manufacturing Company v. National Labor Relations Board*, 213 F. 2d 374. The facts are readably distinguishable. As we understand the *Allis-Chalmers* decision, the court reasoned that if a bargaining representative has the authority to waive the right to strike, an employer may demand that the bargaining representative delegate that authority to the employees

in the bargaining unit. We do not believe that the bargaining agent's limited authority to waive strike, *Mastro Plastic Corp. v. Labor Board*, *supra* implies that the bargaining agent may delegate that authority or impair the right of the employees to freely select the bargaining agent to act exclusively for them; nor may an employer make such a demand of the bargaining agent. An employer's demand is not unlike a situation where a foreign nation by force and arms should impose upon the United States Government a condition that the United States may not declare war unless such declaration is approved by a majority of the people in the United States. Clearly such an act by a foreign power would be in derogation and a dilution of the right of the representatives of Congress under Article I, Section 8 of the Constitution to declare war and act as representatives of all the people. Yet no doubt Congress could agree with another nation to outlaw war. Similarly the bargaining agent may agree not to strike under certain circumstances; however, under the scheme of the National Labor Relations Act the authority to determine whether a strike shall be declared may not be delegated to others. Indeed, if the *Allis-Chalmers* case is authority for sustaining the court below, then there has been reserved to the minority, rights in respect to collective bargaining which are repugnant to the scheme of majority determination. Clearly such was not the intent of Congress since in those areas in which Congress believed that the individual employees needed protection from the majority, it did legislate. (See 29 U.S.C. 159 (a) on individual grievances)

The court below appears to have grounded its conclusion that the employee ballot proposal was permissible on the premise that since the union agreed to the ballot proposal the bargaining was done with it and not with the employees. Such conclusion necessarily assumes the union's authority to make such agreement for which there is no

statutory support. *Nor does the court consider that subsequent bargaining over the subjects covered by the ballot clause will not be with the union.*

The court distinguishes the *Medo Photo Supply Corporation v. National Labor Relations Board*, 321 U.S. 678 on the ground that the attempt to go behind the designated representatives in that case was without the consent of the representatives. Such conclusion of the court not only erroneously assumes that the bargaining representative has the authority to delegate the duties and responsibilities imposed upon it by statute but that an employer may not only demand but force a union by superior bargaining power to delegate its authority over certain subjects of collective bargaining to others. Nor does the lower court consider that in the instant case the union's consent was coerced. Thus the employer in effect selected the bargaining agent, whereas it had the duty "to treat with no other" than the certified bargaining agent. *Medo Photo Supply Corp. v. National Labor Relations Board, supra*, 684.

The effect of the lower court's decision means that a partial delegation of bargaining authority is approved. If the statute is construed so that a bargaining representative may delegate a part of its authority upon the demand of an employer, we fail to find any limitations in the statute which would deprive it of delegating all of its authority. Similarly if an employer, as in the instant case, may require that certain subjects of collective bargaining be submitted to its employees; then we find no proscription in the statute against the employer's requiring that its employees ratify the entire agreement. Thus the lower court's distinguishing of *Corsicana* case, *supra*, may not be supported. If, as the court below asserts "the non-union employees are permitted to express their views on only one phase of the con-

tract, which was a matter of such vital importance as to justify an expression of their views" supports the conclusion that the employee ballot clause is legal; obviously there is no statutory proscription against their expressing their views on each phase of the contract; moreover, we fail to find a statutory definition of matters of "vital importance." The delegation of bargaining authority approved by the court below would defeat the statutory plan of majority representation. The statutory scheme undoubtedly anticipates that in regard to these matters the employee will express himself at union meetings. In fact, the provisos of 8 (a) (3) encourage employee participation in union affairs, but not outside the union.

Section 7 of the Act, 29 U.S.C. 157 guarantees to each employee "the right to refrain from any or all" concerted activities for the purposes of collective bargaining or other mutual aid or protection. Interference with this right is an unfair labor practice and illegal under 29 U.S.C. 158 (a) (1). The employee ballot clause requires the submission of certain subjects of collective bargaining, i.e. the settlement of disputes and grievances, strike resolution and the amendment, modification and termination of the contract to employees who may or may not desire to refrain from engaging in concerted activities. The clause requires the publication of the issues of any dispute to all employees. We submit that the employee ballot clause is a device employed by the employer not only for the purpose of circumventing the bargaining agent in reference to the matters therein covered, but was intended to inject in such matters the participation of employees who did not desire to exercise their right to bargain collectively, but would nevertheless register a protest against the union's position.

Section 8 (d) of the Act, 29 U.S.C. 158 (d) defines the

meaning of "to bargain collectively." One of the requirements of "to bargain collectively" is that the employer and the representative of the employees "meet at reasonable times and confer in good faith with respect to . . . any question arising" under an agreement. The Board has held that the employer's obligation to recognize and bargain with a contracting union continues during the period of a contract. *California Footwear Company*, 114 NLRB 764, 769 and cases there cited.

The employee ballot clause is invalid in that it provides for the abrogation of this requirement by the employer in that grievances and disputes arising under the agreement are submitted directly to the employees and the employer is not required to recognize the union as bargaining agent over these issues. The representatives of the employees is rendered wholly impotent in respect to these subjects since the clause provides that *only* the employees may accept or reject the company's last offer or any subsequent offers. Submitting these issues directly to the employees is proscribed by 8 (d) and is illegal.

The recognition clause measured by the proscriptions of the Act is also clearly an illegal contract term. Our consideration of the reasons for this court's holding that the employee ballot clause is an illegal contract term is equally applicable to the recognition clause. The recognition clause contemplates the dictation by the employer of the bargaining agent and the elimination of the bargaining agent as a party to the contract. Such a contract proposal requires the certified bargaining representatives to bargain over the extent of its authority and its identity as the bargaining agent. The employer not only demanded that the International be excluded as a party to the agreement but demanded that its bargaining authority be delegated to a local. As stated by the court below, the status of a repre-



representative of employees is "acquired by statute and is not within the area of collective bargaining." It is the terms of the agreement which are subject to negotiation under Section 8 (d) rather than the parties with whom the agreement may be negotiated. This seems clear from the examination of Section 8 (d) of the Act, 29 U. S. C. 8 (d), which requires "~~the execution of a written contract incorporating any agreement reached if requested by either party.~~" "Party" must refer to the certified bargaining representative chosen in accordance with Section 9 of the Act, 29 U. S. C. 159, otherwise such language would have no import. Moreover, Section 8 (d) requires that the employer bargain with the certified bargaining representative in respect to "any question arising" under a contract during its term.

### Conclusion

The evil of the decision of the court below in overruling the Board's findings in respect to the employee ballot clause lies in its emasculation of the bargaining power which Congress lodged in the bargaining representative in order to equalize the bargaining power between employees and employers. It was the "inequality of bargaining power" between employers and employees with which Congress was concerned. 29 U. S. C. 151. The lower court's holding in respect to the ballot clause affords a means whereby an employer may interfere with the internal affairs of a labor organization, contrive the mechanics of its strike procedure as well as its settlement of disputes and grievances, and its affirmation or rejection of contracts. Moreover the employer may dictate the residual authority a bargaining agent may exercise after a contract has been signed.

If the Board be reversed a whole new arena of labor combat will be opened where, as in the instant case, industrial unrest and strife will be rampant. The realities of the in-

Industrial world surely dictate that the expertise of the Board in finding 8 (a) (5) violations in this case be credited by this court.

Respectfully submitted,

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# In the Supreme Court of the United States

OCTOBER TERM, 1956

No. ~~733~~ 78

WOOSTER DIVISION OF BORG-WARNER CORPORATION,

*Cross-Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD.

## CROSS-PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals  
For the Sixth Circuit.

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# In the Supreme Court of the United States

OCTOBER TERM, 1956.

No.

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WOOSTER DIVISION OF BORG-WARNER CORPORATION,  
*Cross-Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD.

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## **CROSS-PETITION FOR A WRIT OF CERTIORARI**

**To the United States Court of Appeals  
For the Sixth Circuit.**

---

The Wooster Division of Borg-Warner Corporation (hereinafter called the Company) prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Sixth Circuit, issued September 12, 1956, ordering enforcement against the Company of a part of an order issued by the National Labor Relations Board (hereinafter called the Board), the writ to issue only in the event this Court should grant the Petition for Writ of Certiorari in No. 622 at this Term.

This cross-petition is filed because the Solicitor General, on behalf of the Board, has filed a petition for a writ of certiorari (No. 622, October Term, 1956) to review that part of the decision of the Court below which denied enforcement, in part, of the order issued by the Board. Unless this cross-petition were filed, only a portion of the case presented to the Court below would be tendered to this Court for review.

While the issues are by no means moot, the Company, in view of the collective bargaining which has taken place

since the case was argued below, would not have sought review of the decision of the Court below had the Board's petition not been filed. Moreover, the Company believes, for the reasons set forth in its Brief in Opposition filed concurrently herewith (No. 622), that the Board's petition should be denied.

The Company believes strongly, however, that the question presented by that portion of the decision below which granted partial enforcement of the Board's order is at least as important in the administration of the National Labor Relations Act, as amended (herein called the Act) as the question tendered by the Board's petition (No. 622). Therefore, if this Court determines to review that part of the decision below which denied enforcement of the Board's order, it should review also that part which granted enforcement of the order.

### OPINIONS BELOW.

The Opinion of the Court below (Appendix, *infra*, pp. 22-36) is reported at 236 F. 2d 898. The findings of fact, conclusions of law, and order of the Board (R. 385a-506a) are reported at 113 N. L. R. B. 1288.

### JURISDICTION.

The judgment of the Court below (Appendix, *infra*, pp. 36-37) was entered on September 12, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 and under Section 10 (e) of the National Labor Relations Act, as amended, 61 Stat. 147, 29 U. S. C. 150 (e).

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<sup>1</sup> "R" references are to Joint Appendix filed in the Court below, to which have been added the proceedings in that Court, and all of which have been filed in this Court in support of the Petition for a Writ of Certiorari in No. 622 at this Term.

**QUESTIONS PRESENTED.**

The two questions presented both arose in the course of bargaining negotiations between the Company and the Union which was identified in the Board's certification as "International Union, United Automobile, etc., Workers of America (C. I. O.)." The election and certification both occurred before the Union had chartered a Local to represent the Company's employees. The Union, however, chartered its Local No. 1239 before bargaining began.

The Union's proposals which opened the bargaining negotiations immediately raised the question of how the Union should be identified in the preamble to the labor contract. These proposals were denominated as "*Proposal of Local 1239, U. A. W.-C. I. O.*", and departed from the Board's description of the Union in the certification by demanding that the Union be identified in the preamble as "International Union, United Automobile, etc. Workers, and its Local Union No. 1239."

The Company's first counter-proposal sought, in describing the Union in the preamble, to place greater emphasis on the Union's local. Ultimately, after successive Union proposals and Company counter-proposals, the negotiators for both parties treated the description of the Union party to the agreement as a question simply of emphasis, the Company proposing to describe the Union as "Local Union No. 1239, United Automobile etc. Workers" and the Union proposing to describe itself as "United Automobile etc. Workers, Local Union No. 1239."

The decision of the Court below was that (i) the name by which the Union was to be identified in the preamble to the labor contract was, as a matter of law, outside the bargaining area of "wages, hours and other terms and conditions of employment, or the negotiation of an agreement," (ii) despite the Company's conceded good faith, the

fact that it seriously urged *Union acceptance* of a description of the Union other than the description in the Board's certification constituted *per se*, or as a matter of law, a refusal to recognize the Union, (iii) that therefore the Company was guilty of a refusal to bargain as a matter of law.

The first question presented, therefore, is whether, under circumstances where an employer concededly is bargaining in good faith, in fact, and in fact fully recognizes the Union and its representative status, the employer is guilty of a refusal to bargain as a matter of law, because it sought, over Union objection, the *Union's agreement* to identify itself with a name other than that prescribed in the Board's certification.

The second question is whether substantial evidence on the record considered as a whole supports the findings and the conclusion of the Board that the Company violated Section 8(a) (1) of the Act in inviting striking employees to return to work, in making a bus available to employees who wished to enter the plant in the face of illegal mass picketing, and because on one occasion a supervisor suggested to a Union representative that a meeting between local Union and local Company representatives might be helpful in resolving the strike. The Court below affirmed the finding of the Board that on these counts the Company was guilty of interference in violation of Section 8(a) (1) of the Act, and ordered enforcement of the Board's order which required the Company to cease and desist from interfering with, restraining or coercing its employees in the exercise of their rights under the Act.

#### STATUTE INVOLVED.

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*), are as follows:



### *Unfair Labor Practices*

Sec. 8. (a) It shall be an unfair labor practice for an employer \* \* \*

\* \* \* \* \*

(5) to refuse to bargain collectively with the representative of his employees, subject to the provisions of section 9 (a).

\* \* \* \* \*

(b) It shall be an unfair labor practice for a labor organization or its agents \* \* \*

\* \* \* \* \*

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a);

\* \* \* \* \*

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times, and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession:

\* \* \* \* \*

### *Representatives And Elections*

Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment:

\* \* \* \* \*

**STATEMENT OF THE CASE.****1. Bargaining Background of the Parties and the Proposals in Question.**

The Company is an unincorporated but independent division of Borg-Warner Corporation, operating a plant in Wooster, Ohio, a small town with a population of approximately 15,000 people in a rural area (R. 168a, 239a). Another independent division of Borg-Warner Corporation, the Pesco Products Division, operates a plant in Cleveland, Ohio, in a large industrial area (R. 184a, 239a). The Company and Pesco make similar products (R. 185a).

The Union, having had labor contracts covering employees of the Pesco Division since 1944, commenced an organization campaign at the Company's plant in the Fall of 1952, in which the Union's local Pesco representatives took an active part (R. 239a, Resp. Ex. 2 and 13, R. 112a, 123a). After a representation election held before the Union chartered its local (R. 239a), the Union was certified as the bargaining representative, the Board's certification identifying the Union simply as "International Union, United Automobile, etc., Workers of America, C. I. O." (G. C. Ex. 3-a-b-c, R. 25a-34a). Shortly thereafter, and before it opened the bargaining, the Union chartered its Local No. 1239 (R. 239a, 240a).

The first Union proposals to the Company were delivered by the Union's Local president, and were denominated as "*Proposal of Local 1239, U. A. W.-C. I. O., to Wooster Division of Borg-Warner Corporation*" (R. 154a, 240a; G. C. Ex. 4, p. 8 and Schedule). Throughout the bargaining which followed, the Union sought to compel the Company's acceptance at Wooster of the provisions of the Pesco contract. (See, e.g., R. 240a-241a; G. C. Ex. 9, 63; Resp. Ex. 2).

In its original proposal, the Union sought to contract as "International Union, United Automobile, Aircraft and Agricultural Implement Workers of America *and its Local Union No. 1239*," an obvious departure from the description of the Union in the Board's certification. Throughout the bargaining and the Union's later proposals, it *never* omitted the "Local Union No. 1239" from its proposals for a preamble (G. C. Ex. 4, 9; R. 350a-351a, 357a-358a).

The Company offered successive counter-proposals, seeking *Union agreement* "that the primary emphasis ought to be put on the Local representatives of the Union" in view of the fact "that the problems arose here [in Wooster]; that the people who were involved in those problems lived and worked here; that this was where any problems which arose ought to be settled [and] that the people down here were responsible people with whom it was most likely that we would deal" (R. 315a). Ultimately, although they remained in sharp dispute about many cost and some non-cost items, the Union and the Company both treated their respective proposals and counter-proposals for the description of the Union in the preamble as a question merely of emphasis: the Company proposing "Local Union No. 1239, United Automobile, etc., Workers of America," and the Union proposing "United Automobile, etc. Workers of America, Local Union No. 1239" (R. 350a, 351a).

In the long history of bargaining between the same Union and the Borg-Warner Corporation at its Pesco Division, the principal representatives of both Union and employer were the same men who represented the Union and the Company respectively in the bargaining here involved (R. 239a, 228a). In the Pesco bargaining, despite

the fact that the Board's certification described only the Local Union, the Union had insisted that it be described in the contract by both its International and Local names, and had carried its insistence to the point of strike in order to compel acquiescence on the part of the employer (R. 247a, 313a, 521a).

The Union had a long established practice of bargaining with other employers, as well, with respect to the way in which it should be identified in its collective bargaining contracts. In some instances this identification was in its international name, in others only in the name of its applicable local, and in still others in both (R. 377a, 383a).

**2. It is Conceded That in the Advancement of its Counter-Proposals and in All Other Respects the Company Acted in Good Faith in Fact Throughout the Period of Bargaining Involved.**

Both in the hearing before the Trial Examiner and in oral argument before the full Board, the general counsel freely conceded that at all times during the bargaining the Company had acted in good faith in fact, and no claim to the contrary was ever asserted. This was recognized by the Trial Examiner (R. 389a), both the majority (R. 478a) and the minority (R. 490a) of the Board, and the Court of Appeals (Appendix, *infra*, pp. 25-26, 28-29).

The majority of the Board determined that the Company's liability "turns not upon its good faith but rather upon the legal question of whether the proposals are obligatory subjects of collective bargaining" (R. 478a); or, as paraphrased by the Court of Appeals, "the Company's insistence upon them to the point of impasse, *even though in good faith*, made the action *illegal per se*" (Appendix, *infra*, p. 26, emphasis supplied).

**3. Throughout the Bargaining Involved the Company at all Times Recognized, and Met and Conferred With the Union as the Exclusive Bargaining Representative of the Company's Employees.**

There is no claim that the Company at any time failed, *in fact*, to comply with the requirements of Section 8(d) of the Act "to meet at reasonable times and confer in good faith" with the Union "with respect to wages, hours and other terms and conditions of employment." Nor is there any claim that, *in fact*, the Company failed at any time to recognize the Union for such purposes as "the exclusive representatives of all the employees" as required by Section 9(a) of the Act.

In the bargaining, the Company recognized, met and conferred with the Union's Local representatives and officers, its International representatives, one of its Regional Directors, an Administrative Assistant, its Publicity Director, and an official of its Borg-Warner Council (R. 152a, 153a). The facts fully support the finding of the Court of Appeals that "there was no attempt to bargain with the employees instead of the designated representatives. The Union was at all times recognized as the exclusive representative of the employees. The bargaining was done with it, not with the employees. Any requirement \* \* \* would be the result of *an agreement with the Union* to that effect." (Appendix, *infra*, p. 28, emphasis supplied.)



4. **The Trial Examiner, the General Counsel, the Board Majority and Minority, and the Court of Appeals, all Recognized that the Company's Counter-proposal Was Legal to Make, Legal to Accept, and Legal to Include in a Collectively Bargained Labor Contract.**

The trial examiner specifically held "that submission of the Company's proposals did not violate the Act" (R. 431a), and that they could be "adopted if assented to" (R. 430a). The general counsel stated that he did "not contend that those propositions were matters that could not be proposed by the Company or that they were matters that the Union could not agree" to (p. 18, Report of oral argument before the Board). The majority of the Board recognized "that the respondent could make these proposals"; that they were "not in conflict with the provisions of the Act," and that the Union was entirely free to agree to the proposals (R. 479a). The Court of Appeals recognized the validity of this proposition in holding "that the designated bargaining agent is the party with whom the contract is to be made *unless it voluntarily relinquishes such right*" (Appendix, *infra*, p. 30, emphasis supplied).

5. **At the Direction of the Union's International Executive Board, a Labor Contract With the Company was Ultimately Agreed to and Signed on Behalf of the Union.**

The ultimate execution of a collective bargaining agreement not only was consented to but was originally conceived and specifically directed by the International. This contract contained the last of the Company's several counter-proposals for description of the Union in the preamble.

Four or five of the Union's International representatives summoned local representatives and directed them "to recommend to the membership \* \* \* that we end the

strike and go back to work" (R. 364a). The Union's Local president opposed this action (R. 364a), and the Union's Local representatives "didn't have any intention of going in and talking to the Company until the International called us \* \* \* and asked us to talk the membership into going back to work" (R. 365a). Before the contract was signed it was approved by the Executive Board of the International Union in Detroit (R. 362a, 363a, 375a).

### 6. The Alleged Acts of Interference.

In the course of a strike which occurred during the bargaining, the Union, until it was enjoined by a local state court, engaged in illegal mass picketing to prevent the Company's employees who desired to do so from entering the plant (G. C. Ex. 14; Resp. Ex. 20-A). In the face of this illegal picketing, the Company simply made available without charge a bus in which employees who wished to do so could pass without molestation through the plant gates. (See G. C. Ex. 32.) During the strike, by newspaper advertisements the Company invited striking employees to return to work and advised them that the bus was available. (See, e.g., G. C. Ex. 19.)

On a single occasion during the strike, two supervisory employees visited the home of a local Union representative and "suggested that it might be helpful if there were a meeting with the local bargaining committee and the local company committee without international representatives and high-priced lawyers present" (R. 267a-268a, as corrected R. 471a). This suggestion was referred to the Union's executive board which decided not to hold the meeting; and thereafter bargaining continued with local and international Union representatives in attendance (R. 268).

### REASONS WHY CERTIORARI SHOULD BE GRANTED.

The decision of the Court below, that the Company violated Section 8(a) (5) in seeking Union acceptance of its proposed preamble, rests on the Court's conclusion that *per se*, or as a matter of law, the Company "was not within its rights in insisting upon its proposal" concerning the preamble (Appendix, *infra*, p. 31). Implicit in this conclusion, which is squarely opposed to the test of "good faith" enjoined by this Court in *N. L. R. B. v. American National Insurance Co.*, 343 U. S. 395, are the erroneous conclusions that the preamble proposed by the Company (i) did not relate to "terms and conditions of employment, or the negotiation of an agreement," and (ii) withheld recognition from the certified bargaining agent. Both conclusions present questions which are important to employer and union negotiators alike in the discharge of their duty to bargain collectively as required by the Act.

The decision of the Court below that the Company engaged in acts of interference in violation of Section 8(a) (1) of the Act is not supported by substantial evidence on the record considered as a whole and is in conflict with the decision of the Court of Appeals for the Seventh Circuit in *N. L. R. B. v. Bradley Washfountain Co.*, 192 F. 2d 144, and with Section 8(c) of the Act.

## ARGUMENT.

### 1. The Preamble Counter-proposal Involved "Terms and Conditions of Employment, or the Negotiation of an Agreement."

Sections 8(a)(5), 8(b)(3) and 8(d) of the Act together require employers and unions to bargain about "wages," "hours," "terms" of employment, "conditions" of employment, and the "negotiation of an agreement." But this does not restrict collective bargaining "to those subjects which up to 1935 had been commonly bargained about in negotiations between employers and employees." *W. W. Cross & Co., Inc., v. National Labor Relations Board*, 174 F. 2d 875, 878. Collective bargaining is "to be used irrespective of the fact that the specific differences to be adjusted had not previously been considered in the framing of collective bargains." *Inland Steel Co.*, 77 N. L. R. B. 1, 9. "Effective collective bargaining has been generally conceded to include the right \* \* \* to bargain about the exceptional as well as the routine \* \* \*." *Order of Railroad Telegraphers v. Railway Express Agency*, 321 U. S. 343, 347.

"Common collective bargaining practice" and the "traditions of bargaining" of a particular industry or union must be considered in appraising the broad scope of bargainable subjects. *National Labor Relations Board v. American National Insurance Co.*, 343 U. S. 395, 407. In determining the scope of collective bargaining, the Board itself has consistently recognized the bargaining practices not only of a particular industry but even of a particular party to the negotiations. *Weyerhaeuser Timber Company*, 87 N. L. R. B. 672. The practice of both employers and unions to bargain with regard to the name by which

employers and unions respectively shall be identified in labor contracts is well established. (*Infra*, pp. 17-19.)

Administration of the labor contract<sup>1</sup> was at the root of the Company's proposal to emphasize the Union's local in describing the Union in the contract preamble. It is, of course, "common collective bargaining practice" (343 U. S. 395, 407) for labor contracts to deal with many "terms" or "conditions" of employment which, like the preamble, relate to administration of the contract. The "superseniority" of union stewards or officers, the furnishing and use of union bulletin boards in the plant, the terms upon which union representatives will participate in a grievance procedure, and at what step—all these and many similar ones involve "terms" or "conditions" of employment and the administration of the labor contract. (See for example, G. C. Ex. 13, *Labor Contract*, pp. 4, 5, 6; 12, 21, 24; Bureau of National Affairs, *Contract Clause Finder*, Section 60: 124-127; 62: 301-302, 361-364; 65: 241-245; 301-304.)

The Union's proposals to depart from the Board's description of the Union in the Board's certification merely followed the Union's established bargaining practice at the Pesco Division of Borg-Warner. There *the same Union and employer negotiators* had bargained in the past to the point of a strike about the description of the Union party to the labor contract, and had recognized this subject as a "term" or "condition" of employment, relevant to the administration of the contract.

Even in the negotiations involved here, the *Company* did not raise the question. The Company's proposed pre-

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<sup>1</sup> " \* \* the extent of union and management participation in the administration of such matters is itself a condition of employment to be settled by bargaining." *NLRB v. American National Insurance Co.*, 343 U. S. 395, 409.



amble was a *counter-proposal*<sup>1</sup> advanced by the Company in the background of the Union's established practice to bargain concerning the description of the parties to the labor contract, and specifically directed to the subject already opened for bargaining by the Union.

In the negotiations which ensued, *both the Company and the Union* confirmed their recognition of the description of the Union party to the contract as a "term" or "condition" of employment related to the administration of the contract, by actually bargaining about the form the preamble should take. Successive proposals were made by each, until ultimately both the Company and the Union treated the question as simply one of emphasis, whether the local or international should be named first. This conceded fact makes all the more startling the conclusion of the Court below that despite the Company's admitted good faith, it nonetheless violated the Act.

In their negotiations concerning the preamble, the Company and the Union were dealing not only with a "term" or "condition" of employment but also with the "negotiation of an agreement." The "negotiation" of a labor contract, like the negotiation of any other contract, begins with the question of the form the contract should take and how the parties to it should be described.

Inclusion of the phrase "negotiation of an agreement" in Section 8(d) of the Act was intended to make clear that the parties to collective bargaining were obligated to bargain about the questions, which would inevitably arise in

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<sup>1</sup> " \* \* \* the Board would permit an employer to 'propose' such a clause. But the Board would forbid bargaining for any such clause when the Union declines to accept the proposal, even where the clause is offered as a counter-proposal to a Union demand. \* \* \*" *NLRB v. American Insurance Co.*, 343 U. S. 395, 408.

negotiations, concerning the form the contract should take and how the parties to it should be described. On familiar principles of statutory construction this phrase cannot be held to be redundant or without effect.

**2. In Seeking Union Acceptance of Its Preamble Counter-proposal, the Company Did Not Withhold or Refuse Recognition of the Union.**

Two decisive facts are undisputed: first, that at all times the Company *in fact* bargained in complete good faith; and second, that the Company "at all times recognized the Union as the exclusive bargaining agent and did all of its bargaining with it as such agent." (Appendix, *infra*, p. 28). The Company thus fully discharged *the only obligations* toward the Union imposed upon the Company by the Act, that is: "To meet (the Union) at reasonable times" and to "confer (with the Union) in good faith" as the "exclusive representative" of its employees concerning "wages, hours and other terms and conditions of employment," the "negotiation of an agreement or any question arising thereunder," and "the execution of a written contract incorporating any agreement reached."

All of these things the Company did, facts which are not in dispute. *The Act requires no more.*

In advancing the Company's preamble counter-proposal, the Company merely asked—not the employees but their accredited Union representatives—for *the Union's agreement* upon a description of the Union which would emphasize the Union's local representatives who would administer the labor contract.

There was nothing extraordinary or novel about this counter-proposal, and certainly no refusal of recognition in asking the Union—the certified bargaining agent—to

agree to it. It was no different in principle, and no more involved a refusal of recognition, than bargaining about such similar and common bargaining subjects as what provision the labor contract should contain with respect to

(a) Whether or not, and the conditions upon which, Union representatives other than employees will be admitted to an employer's premises for bargaining purposes.

(b) The restrictions upon the number and class of Union representatives who may bargain for employees at various stages of the grievance process or in particular cases (e.g., a restriction to a shop steward at the first stage of the process, or a permission for Union time study or pension consultants to participate in specialized bargaining problems).

(c) The extent to which, if any, that the Union, or more usually its International, shall be amenable to suit or liable in damages as a result of Section 301 of the Labor Management Relations Act.<sup>1</sup>

The conclusion of the Court below that "after all issues have been agreed upon the written contract embodying the agreement must be made with the agent who made the agreement" (Appendix, *infra*, p. 30), simply ignores the realities of collective bargaining. True, the "agent who made the agreement" is the certified bargaining repre-

<sup>1</sup> "Provisions designed to limit the union's liability for violations of the no-strike pledge appear in 35 percent of contracts, \* \* \*. International unions are specifically excluded from strike liability in 9 percent of contracts, \* \* \*. Other efforts are made to avoid liability by pinning down strike responsibility. \* \* \* Each of these types appear in 8 percent of contracts, mostly in manufacturing agreements, and are most prevalent in \* \* \* autos & transportation equipment \* \* \*." Bureau National Affairs, *Collective Bargaining Negotiations and Contracts*, Vol. 2, 77:3 and 77:4.

sentative. Historically, however, it has become a well recognized bargaining practice for "the agent who made the agreement" to insist that "the written contract embodying the agreement" shall be executed in a name different from the name specified in the certification.

Some unions, like the Steelworkers, insist that they be described in their contracts only by their International name. Other unions, like the Teamsters, are equally insistent that their contract description be only in their Local name. Some unions, as is true of the Union here involved, follow a varied pattern, sometimes describing themselves by their International name, sometimes by their Local name, and sometimes by both. (R. 377a, 379a, 381a, 382a-383a). There is no question but what in the field of practical contract negotiation both employers and unions recognize that the names by which the parties to the contract are identified therein do not involve a question of recognition of the right to bargain, but rather present a question involving conditions of employment and *administration of the contract*.<sup>1</sup>

The collective bargaining required by the Act will be strangled if it becomes a one-way street. Nothing in the Act supports the conclusion, when Union and the em-

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<sup>1</sup> "Some employers prefer to have the national or international union made a party to the contract together with the local union in the belief that enforceability of the agreement is thereby strengthened.

"At the same time, parent organizations sometimes insist on being made party to contracts negotiated by their locals in order to retain a proprietary interest in the contract under any conditions. However, the passage of the 1947 Labor Law has inspired some international unions to avoid becoming party to contracts lest they then become liable for court damages in the event of violations." Bureau National Affairs, *Collective Bargaining Negotiations and Contracts*, Vol. 2, 70:11.

ployer are each bargaining in good faith, that Union preferences for the name in which it shall be identified in the contract are sacrosanct and employer views are proscribed as a matter of law.

Finally, whatever may have been the Company's duty, according to the Court below, "after all issues have been agreed upon," it is clear from the Act itself that the Company's duty to bargain, acting in conceded good faith, did not "compel \* \* \* the Company to agree to a proposal or require the making of a concession." (Section 8(d)). The Company was legally free, in good faith which is conceded here, to withhold agreement to the Union's proposed preamble.<sup>1</sup>

*But here the good faith bargaining of the parties produced agreement.* The only compulsion of the statute is that the parties shall "meet" and "confer" in an effort "in good faith" to reach agreement. It is a strange doctrine that would hold that when parties admittedly have met and conferred in good faith and have *reached agreement* upon a proposal concededly legal to make and legal to accept, their efforts, by some *per se* test, have, as a matter of law, transgressed the statute.

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<sup>1</sup> Cf. *NLRB v. American National Insurance Co.*, 343 U. S. 395, 407:

"The Board's argument is a technical one for it is conceded that respondent would not be guilty of an unfair labor practice if, instead of proposing a clause that removed some matters from arbitration, it simply refused in good faith to agree to the Union proposal for unlimited arbitration."

In the case at bar, the Board majority expressly held that "the Respondent could have accepted the variance in the certification by the International, but was not required under the Act to do so. Indeed, the Respondent had the right to refuse to contract with the Local as a co-representative." (R. 481a.)



**3. The Company Did Not Interfere With, Restrain or Coerce Its Employees in Violation of Section 8(a)(1) of the Act.**

The most which could be found from the evidence is this:

(a) That in a background of illegal mass picketing the Company made a bus available for employees, who wished to do so, to enter the plant without risk of injury or molestation.

(b) That the Company invited striking employees to return to work along with the employees who had already done so, and in an advertisement referred to the Union's international representatives as "professionals."

(c) That one supervisor expressed the opinion to one Union representative that a meeting between local Union and local Company representatives might be helpful, but that the meeting never was held and bargaining continued without interruption and with both international and local Union representatives present.

"Substantial evidence on the record considered as a whole" does not support either the findings or the conclusion of the Board that the Company interfered with, restrained or coerced its employees in violation of Section 8(a)(1) of the Act. Certainly providing a bus did not coerce or threaten anyone and if it interfered with anything it was the illegal mass picketing. No striking employee was "induced" to abandon either the Union or the strike simply because he was not charged a fare for riding the bus.

Nor was there interference, restraint or coercion in connection with the advertisements to strikers or the iso-

lated suggestion of the supervisor. The Company's advertisements, fairly construed, simply advised striking employees of the terms of its offer which had been lawfully placed in effect after rejection by the Union (Cf. *NLRB v. Crompton-Highland Mills, Inc.*, 337 U. S. 217, 224-225), and urged them to return to work. The supervisor's suggestion that a meeting be held with only some of the respective negotiators participating was nothing more than a single suggestion that a less formal meeting might be helpful in resolving the many issues in dispute. It was left to the Union to accept or reject the suggestion and bargaining continued as in the past when the Union rejected the idea. (R. 266a-268a.)

Nowhere was there any threat or reprisal or promise of benefit. The Company merely expressed, as Section 8 (c) of the Act authorized it to do, its "views, argument or opinion" concerning the strike and the issues in dispute. See, e.g., *NLRB v. Bradley Washfountain Co.*, 192 F. 2d 144.

### CONCLUSION.

For the reasons stated, this Cross Petition for a Writ of Certiorari should be granted in the event this Court grants the petition of the Solicitor General in Case No. 622.

Respectfully submitted,

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## APPENDIX.

OPINION OF THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT:

Nos. 12,687, 12,730.

Decided September 12, 1956.

Before MARTIN, MILLER and STEWART, *Circuit Judges*.

MILLER, *Circuit Judge*. These cases are before the Court upon a petition by the National Labor Relations Board for enforcement of its order against the respondent Wooster Division of Borg-Warner Corporation, hereinafter called the Company, and upon a petition by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, (UAW-CIO), hereinafter called the International or the Union, to review and set aside so much of the order as dismissed the complaint against the Company. The Company, which is an unincorporated division of Borg-Warner Corporation is engaged at Wooster, Ohio, in the manufacture and sale of fuel and hydraulic pumps. Jurisdiction of the proceedings under Section 10 (e) and (f) of the National Labor Relations Act is conceded.

Following an intensive election campaign, the Board on December 18, 1952, certified the Union as the exclusive representative of the Company's Wooster employees. On January 23, 1953, the Union presented a proposed agreement to the Company which referred to the Union as "International Union, United Automobile, Aircraft and Agricultural Implement Workers of America and its Local Union No. 1239, UAW-CIO." The Company submitted counter proposals on so-called noneconomic issues to the Union on February 9th in which it designated the employees' representative as "Local Union 1239, affiliated with the International Union, United Automobile, Aircraft

and Agricultural Implement Workers of America (UAW-CIO)." The Union's representative told the Company representatives that this provision violated the certification of the Board.

This counter proposal of the Company also provided that on issues not subject to arbitration no strike could be called unless a majority of the employees in the bargaining unit, both union and non-union, voted by secret ballot on whether to accept or reject the Company's last offer or any subsequent offer. The Union's representative stated that he would not discuss this ballot proposal because the Union would not accept it under any circumstances.

Bargaining conferences were held during February and March. The Union's proposals were substantially the same as were contained in an agreement which it had secured for employees at the Cleveland Pesco Division of Borg-Warner Corporation. The Company submitted its economic proposals on March 11th. They were not satisfactory to the Union. On March 14, the Union distributed among the employees a document showing under 21 separate headings the difference between the Company's offer and the provisions of the Pesco agreement. A strike at the plant was called if no solution of the overall issue was reached by March 20th. There were bargaining conferences on March 17, 18 and 19 without reaching an agreement. At the meeting on March 19, the Union submitted a counter proposal covering thirty issues still in dispute. The Company took the position that its last proposal should be accepted and no agreement was reached. The strike commenced on March 20.

Bargaining continued during April. The Company made a final proposal to change the name of the representative to "Local Union 1239 of United Automobile, Aircraft and Agricultural Implement Workers of America."

The Union countered with an offer to make its name read "The International, Local 1239." No agreement was reached, the Union insisting that the International be the primary party and the Company insisting that the primary party be the Local. The Company also refused to recede from its insistence upon the employee ballot proposal. On April 21, the Union asked the Company if it would withdraw its demands concerning the recognition and employee ballot provisions if the Union acceded to all the other proposals of the Company. The Company representative stated that the Company thought its proposal was fair and that it should be taken "as it is."

On April 25th, the International recommended that the employees accept the best offer they could get from the Company and return to work. On May 5th, a collective bargaining agreement retroactive to March 20th was entered into between the Local and the Company, which recognized the Local as the exclusive bargaining agent and contained the disputed employee ballot proposal.

The Union filed its initial charge on April 7, 1953. Following hearings and the Intermediate Report of the Trial Examiner, the Board, with two of its members dissenting, held that the Company did not propose its recognition and employee ballot clauses as matters which the Union could voluntarily accept or reject, but adamantly insisted upon the inclusion of these two clauses as a condition precedent to the execution of any agreement; that its liability under Section 8 (a) (5) turned not upon its good faith, but rather upon the legal question of whether the proposals were obligatory subjects of collective bargaining; that the Company was obligated to accord exclusive and unequivocal recognition to the statutory



representative and that its insistence upon making the Local not only a party to the agreement but the only party empowered to represent the employees was in complete derogation of the certificate; that the employee ballot proposal was simply an attempt to resolve economic differences at the bargaining table between an employer and the statutory agent by dealing with the employees as individuals, which was in derogation of the status of the statutory representative and violated the representation concept embodied in the Act. It held that the Company by adamantly insisting upon the inclusion of its proposed recognition and employee vote clauses as a condition to the execution of any contract refused to bargain in violation of Section 8 (a) (5) of the Act.

The Board also held that the Company had interfered with its employees in violation of Section 8 (a) (1) of the Act by soliciting them to abandon the Union and return to work, and by having advised the strikers that they would be, and were, deemed to have quit their jobs by failing to return to work by April 20th.

The Board held, however, contrary to the Trial Examiner, that the strike resulted from the parties' failure to reach agreement on the economic issues in dispute, and was not attributable to the Company's insistence on its recognition and employee ballot proposals. It was accordingly not an unfair labor practice strike entitling the strikers to reinstatement as a matter of right. It dismissed so much of the complaint as charged the Company with refusing to reinstate any employee in violation of Section 8 (a) (3) and (1) of the Act. The Union seeks a review of this ruling.

The Order, enforcement of which is now sought by the Board, directed the Company to cease and desist from (1) refusing to bargain collectively with the Union; (2)

insisting upon the recognition of a union other than the statutory representative and insisting upon employee ballot proposals, or any other proposals not involving conditions of employment; (3) soliciting or threatening with loss of employment the striking employees; and (4) in any other manner interfering with its employees in the exercise of their rights under the Act. It affirmatively directed the Company to bargain collectively with the Union with respect to rates of pay, hours, and other conditions of employment, and if an understanding was reached, embody such understanding in a signed agreement.

The Board in its ruling takes the position that the Company's liability to bargain collectively under Section 8 (a) (5) of the Act turns not upon its good faith, but rather upon the legal question of whether the proposals are obligatory subjects of collective bargaining under the statute. It recognizes that if the proposals are permissible statutory demands, the Company was privileged to adamantly insist upon bargaining as to them, provided the bargaining was conducted in good faith. *N. L. R. B. v. American National Ins. Co.*, 343 U. S. 395, 404 \* \* \*; *N. L. R. B. v. United Clay Mines Corp.*, 219 F. (2d) 120, C. A. 6th. On the other hand, it contends that the proposals are not within the statutory subjects of bargaining, namely, "wages, hours, and other terms and conditions of employment" (Sec. 8 [d] of the Act), and that the Company's insistence upon them to the point of impasse, even though in good faith, made the action illegal per se. *N. L. R. B. v. P. Lorillard Co.*, 117 F. (2d) 921, C. A. 6th; *N. L. R. B. v. Taormina*, 207 F. (2d) 251, C. A. 5th; *N. L. R. B. v. Dalton Telephone Co.*, 187 F. (2d) 811, C. A. 5th, cert. denied, 342 U. S. 824 \* \* \*; *N. L. R. B. v. Corsicana Cotton Mills*, 178 F. (2d) 344, C. A. 5th.

In *Allis-Chalmers Mfg. Co. v. N. L. R. B.*, 213 F. (2d) 374, 376, C. A. 7th, the Court held that if the strike vote clause in that case was included within the statutory subjects of bargaining the employer was permitted to insist upon its position with respect thereto, provided the bargaining was conducted in good faith, but if it was not included within the statutory subjects of bargaining it could not be insisted upon by the employer to the point of creating an impasse in the negotiations. The Court, however rule, contrary to the ruling of the Board in this case, that the strike vote proposal fell within the statutory subjects of bargaining about which the employer had the right to bargain in good faith. We are in accord with that ruling, without attempting to pass upon the correctness of the Court's statement with respect to a situation where a proposed clause is not within the statutory subjects of bargaining. The bargaining area of the Act has no well defined boundaries; the phrase "conditions of employment" has not acquired a hardened and precise meaning. Management and labor are now being required to bargain collectively about issues which formerly were not considered as proper issues for inclusion in the usual collective bargaining agreement. *Inland Steel Co. v. N. L. R. B.*, 170 F. (2d) 247, 251, C. A. 7th (retirement and pension plans), *W. W. Cross & Co. v. N. L. R. B.*, 174 F. (2d) 875, C. A. 1st (group insurance program), *Richfield Oil Corp. v. N. L. R. B.*, 231 F. (2d) 717, C. A. D. C. (stock purchase plan), *N. L. R. B. v. Niles-Bement-Pond Co.*, 199 F. (2d) 713, C. A. 2nd (Christmas bonus), *N. L. R. B. v. Reed & Prince Mfg. Co.*, 205 F. (2d) 131, 136, C. A. 1st, (Check-off proposal). The area of compulsory collective bargaining is obviously an expanding one. The Board concedes that a no-strike clause is within the area. *N. L. R. B. v.*

*American National Insurance Co.*, supra, 343 U. S. at p. 408 \* \* \*, note 22. The qualified no-strike proposal of the Company should not be classified differently. *Allis-Chalmers Mfg. Co. v. N. L. R. B.*, supra. In our opinion, the strike ballot proposal was within the area.

The Board contends that to permit an employer "to go behind the designated representatives in order to bargain with the employees themselves" would undermine the representative status of the Union contrary to the provisions of Section 9 (a) of the Act \* \* \* which provides that the representatives selected by the majority of the employees "shall be the exclusive representatives of all the employees" in the bargaining unit. *Medo Photo Supply Corp. v. N. L. R. B.*, 321 U. S. 678, 684, 685, 687 \* \* \*; *May Department Stores Co. v. N. L. R. B.*, 326 U. S. 376, 383-384 \* \* \*. In *Medo Photo Supply Corp. v. N. L. R. B.*, the Court held that orderly collective bargaining requires that the employer be not permitted to go behind the designated representatives, in order to bargain with the employees themselves, even though the employees asked that the designated representatives be disregarded; that the duty of the employer to bargain collectively with the chosen representatives of his employees also involves "the negative duty to treat with no other." In that case, however, the attempt to go behind the designated representatives was without the consent of the representatives. In the present case, there was no attempt to bargain with the employees instead of the designated representatives. The Union was at all times recognized as the exclusive representative of the employees; the bargaining was done with it, not with the employees. Any requirement that the employees approve the action of the Union would be the result of an agreement with the Union to that effect. We

do not believe that the ballot proposal denied in any way the unqualified recognition of the certified bargaining agent within the meaning of the Act.

The Board urges upon us the ruling in *N. L. R. B. v. Corsicana Cotton Mills*, 178 F. (2d) 344, C. A. 5th. In that case the employer insisted that the contract contain a provision to the effect that non-union employees should have a right to attend union meetings and to vote upon the provisions of the contract negotiated by the union as bargaining agent. The Court held that such insistence withheld recognition from the Union as bargaining agent. The facts in that case go far beyond the present case. In that case the certified representative would have been unable to make *any* binding agreement with the employer, who as a practical matter would be dealing with all of the employees in agreeing upon the terms of the contract. In the present case, the non-union employees are permitted to express their views on only one phase of the contract, which was a matter of such vital importance as to justify an expression of their views.

The Company contends that the recognition proposal is also within the bargaining area, pointing out that Section 8 (d) of the Act defining the obligation to bargain collectively does not restrict it to conferring in good faith with respect to wages, hours and other terms and conditions of employment but includes "the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached. \* \* \*" We do not think the Section is to be so broadly construed. Section 8 (a) (5), which imposes the duty of collective bargaining, is by its express terms tied in with Section 9 (a) which makes the designated representative the exclusive representative of the



employees for the purpose of collective bargaining. This status is acquired by statute and is not within the area of collective bargaining. *N. L. R. B. v. Louisville Refining Co.*, 102 F. (2d) 678, 680-681, C. A. 6th, certiorari denied, 308 U. S. 568 \* \* \*; *N. L. R. B. v. Deena Artware*, 198 F. (2) 645, 651, C. A. 6th, certiorari denied, 345 U. S. 906 \* \* \*. Section 8 (d) must be construed in connection with Sections 8 (a) (5) and 9 (a). When so considered, the phrase "negotiation of an agreement, or any question arising thereunder" means the terms of the agreement rather than the party with whom the agreement is being negotiated.

The Company attempts to justify its position by pointing out that it at all times recognized the Union as the exclusive bargaining agent and did all of its bargaining with it as such agent. It contends that there is nothing in the Act which requires that after all issues have been agreed upon the written contract embodying the agreement must be made with the agent who negotiated the agreement. Although there is no specific provision to that effect, we believe it is clearly implied that the designated bargaining agent is the party with whom the contract is to be made unless it voluntarily relinquishes such right in favor of another. The collective bargaining contract is not the contract of employment. It is rather the trade agreement which controls the individual contracts of employment. *J. I. Case Co. v. N. L. R. B.*, 321 U. S. 332 \* \* \*. It is a strained construction of the Act to say that the party representing the employees and negotiating such a trade agreement for their benefit is not entitled to complete the job by having the contract which it has negotiated executed with it as the representative of the individual employees for whom it is acting. Such a contract is necessarily executed with a representative of the individual em-

ployees. We fail to see the reasoning which would authorize the substitution of the Local, not the official representative of the employees, for the Union which is the official representative of the employees, over the objections of the Union. The fact that the Union offered to share this right with its Local did not give the Company the right to insist that it relinquish the right completely. The Company was not within its rights in insisting upon its proposal pertaining to this phase of the case.

While the strike was in progress the Company solicited its employees through newspaper and radio advertising to return to work. It stressed the advantages to be derived by returning to work and the unreasonableness of the Union's demands. It offered free bus transportation for this purpose. Two Company foremen visited the Local's vice-president at his home for that purpose and suggested that an agreement might be arrived at "if the Local would forget the International." The Board ruled that such conduct violated Section 8 (a) (1) of the Act because it was an attempt to deal individually with the employees rather than with the Union and was reasonably calculated to undermine the Union. We recognize the rule urged upon us by the Company that communications with employees by an employer are protected under the First Amendment of the Constitution so long as such communications contain no threat of reprisal or promise of benefit. *N. L. R. B. v. Ford Motor Co.*, 114 F. (2) 905, 913-915, C. A. 6th, certiorari denied, 312 U. S. 689 \* \* \*; *N. L. R. B. v. Cleveland Trust Co.*, 214 F. (2d) 95, 99, C. A. 6th. Under the rule the employer is free to say to his employees that he wishes to carry on production and, if the employees desire so to do, they may return to work. *N. L. R. B. v. Bradley Washfountain Co.*, 192 F. (2d) 144, 153, C. A. 7th. For the purposes of this opinion, it is suf-

ficient to say that in our opinion the communications complained of went beyond permissible limits. *N. L. R. B. v. Montgomery Ward & Co.*, 133 F. (2d) 676, 681, C. A. 9th \* \* \*; *N. L. R. B. v. Clearfield Cheese Co.*, 213 F. (2d) 70, 72-83, C. A. 3rd; *N. L. R. B. v. James Thompson & Co.*, 208 F. (2d) 743, 748, C. A. 2nd; *May Department Stores Co., v. N. L. R. B.*, 326 U. S. 376, 385 \* \* \*.

The Company also advised its striking employees by newspaper advertisement and individual letters that their jobs were still open if they returned to work, that the Company was hiring new people every day but would hold the jobs open until Monday, April 20, 1953, at which time it would start hiring replacements, and that setting a deadline for return was a necessary move in order to know who was returning and who was not. In a letter of April 15, 1953 it was said: "If you do not return, I wish you the best of success in your new job whatever and wherever it may be." In a letter of April 22, 1953, addressed to "Those Who Chose to Give Up Their Jobs at Wooster Division" the Company's President stated: "When you did not report for work on April 20, it became apparent that you had decided to give up your job here." The Board found this to be a violation of Section 8 (a) (1) of the Act in that it was an attempt to cause the employees to abandon the strike by unlawful threats of discharge.

There is authority to the effect that notice to a striking employee that he will lose his job unless he returns to work by a certain dead-line is an illegal discharge. *N. L. R. B. v. U. S. Cold Storage Corp.*, *supra*, 203 F. (2d) 924, 927, C. A. 5th, certiorari denied, 346 U. S. 818; *N. L. R. B. v. Beaver Meadow Creamery*, 215 F. (2d) 247, 252, C. A. 3rd; *N. L. R. B. v. Clearfield Cheese Co.*, *supra*, 213 F. (2d) 70, 72-73, C. A. 3rd. There are other cases which hold that where striking employees are subject to

being replaced it is not an unfair labor practice to notify them that their jobs are available until a certain time at which time replacements will be sought. *Kansas Milling Co. v. N. L. R. B.*, 185 F. (2d) 413, 419-420, C. A. 10th; *N. L. R. B. v. Hart Cotton Mills*, 190 F. (2d) 964, 973, C. A. 4th; *N. L. R. B. v. Bradley Washfountain Co.*, *supra*, 192 F. (2d) 144, 153-154, C. A. 7th; *Rubin Bros. Footwear v. N. L. R. B.*, 203 F. (2d) 486, 487, C. A. 5th. This Court has also so ruled. *Ohio Associated Tel. Co. v. N. L. R. B.*, 192 F. (2d) 664, 667-668, C. A. 6th; *Shopmen's Local Union, etc. v. N. L. R. B.*, 219 F. (2d) 874, C. A. 6th. In the present case, the newspaper advertisement stated—"We would prefer to have you return to your own job." The letter of April 15, 1953, contained the statement: "I sincerely hope you will return by Monday, April 20. You may be sure you will be most welcome." We do not consider the advertisement and letters with respect to replacements an unfair labor practice.

In dismissing so much of the complaint as sought reinstatement of 36 employees the Board found that the record failed to establish that the economic strikers were discriminated against with respect to their reinstatement, and that substantially all of the striking employees were eventually reinstated in accordance with a detailed plan worked out between the Company and the Local. This agreement, dated May 2, 1953, stated that the Company had 59 jobs available, which were not sufficient to take care of all striking employees. It divided the employees who had not returned to work into two classifications, (1) those whose jobs had not been replaced or for whom there were job openings, and (2) those whose jobs had been replaced or whose jobs had been eliminated. Under the specified procedure the available jobs were offered

to those in the first classification before being made available for those in the second classification.

This method of reinstatement and its approval by the Board was based upon the Board's ruling that the strike was an economic one rather than an unfair labor practice strike. It is settled law that where the strike is an economic one the employer can replace the striking employees with others in an effort to carry on the business and is not required to discharge those hired to fill the places of strikers upon the election of the latter to resume their employment. *N. L. R. B. v. Mackay Radio & Telegraph Co.*, 304 U. S. 333, 345-346 \* \* \*. But he can not discharge economic strikers prior to the time their jobs are filled, or discriminate against them by reason of the strike in reinstating those whose jobs have not been filled. Sec. 2 (3) and (8) (a) (3) of the Act, Sec. 152 (3) and 158 (a) (3), Title 29, U. S. C. A. *N. L. R. B. v. U. S. Cold Storage Corp.*, *supra*, 203 F. (2d) 924, 927, C. A. 5th; *Hamilton v. N. L. R. B.*, 160 F. (2d) 465, 468-469, C. A. 6th.

However, if the strike is caused by an unfair labor practice, the striking employees are entitled to reinstatement upon termination of the strike. *N. L. R. B. v. Deena Artware*, *supra*, 198 F. (2d) 645, C. A. 6th; *N. L. R. B. v. Thayer Co.*, 213 F. (2d) 748, 752, C. A. 1st, certiorari denied, 348 U. S. 883 \* \* \*; *N. L. R. B. v. Pecheur Lozengue Co.*, 209 F. (2d) 393, 404-405, C. A. 2nd, certiorari denied, 347 U. S. 953 \* \* \*. The Board found that the record did not establish by a preponderance of the evidence that the strike was caused by the Company's refusal to bargain rather than by a failure to reach agreement on the economic issues in dispute. This finding is vigorously challenged by the Union.

The main objective of the Union was to obtain for the Wooster Division employees the higher wages and



benefits which it had previously obtained for the Pesco Division employees. The Union's first proposal was substantially what it had obtained in its Pesco contract. The Company's economic proposals were compared with the provisions of the Pesco contract and their shortcomings emphasized. Members of the Pesco Local attended union meetings. The Pesco Local pledged its support in the event of a strike. The Union's proposal on March 19, the day before the strike, listed 30 issues as still in dispute. During the strike Union bulletins and newspaper advertisements discussed the economic issues involved without referring to the recognition clause. Inferences from proven facts may be drawn by the Board which differ from those drawn by the examiner. *N. L. R. B., v. Wiltse*, 188 F. (2) 917, 925, C. A. 6th. Giving full consideration to the trial examiner's contrary view in accordance with the ruling in *Universal Camera Corporation v. N. L. R. B.*, 340 U. S. 474, 492-497 \* \* \* we think the evidence sustains a finding that the dispute over the economic issues was a cause of the strike.

The Union contends that in any event the unfair labor practice of the Company was a contributing cause of the strike which as a matter of law requires that the strike be treated as an unfair labor practice strike. That such is the legal consequence of such a factual situation appears settled. *N. L. R. B. v. Remington Rand, Inc.*, 94 F. (2d) 862, 872, C. A. 2nd, certiorari denied, 304 U. S. 576 \* \* \*; *N. L. R. B. v. A. Sartorius & Co.*, 140 F. (2d) 203, 206, C. A. 2nd; *N. L. R. B. v. Stilley Plywood Co.*, 199 F. (2d) 319, C. A. 4th. The burden rested upon the Company to show that the strike would have taken place even if it had not insisted upon its recognition proposal. *N. L. R. B. v. Stackpole Carbon Co.*, 105 F. (2d) 167, 176, C. A. 3rd, certiorari denied, 308 U. S. 605. \* \* \*. We do not construe

the findings of the Board as including an express finding on this factual issue. Counsel for the Board apparently so concedes by his statement in the brief that "the Board in effect found" such to be the case. We agree with counsel for the Union that the Board's findings are inadequate with respect to this issue which is controlling on the question of reinstatement. The Union also challenges the validity of the agreement under which reinstatement was carried out. On these issues the case is remanded to the Board for further findings and rulings.

The order of the Board is modified by striking therefrom the words "and employee ballot proposals or any other proposals not involving conditions of employment" in paragraph 1 (b), the words "and threatening its employees with loss of employment unless they abandon the strike" in paragraph 1 (c), and the final paragraph dismissing so much of the complaint dealing with the alleged refusal of the Company to reinstate certain employees, with like modifications of the posted notice, and as so modified enforcement of the order is decreed. The case is remanded to the Board for further findings and rulings in accordance with the Court's opinion herein.

**DECISION OF THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT.**

(Entered September 12, 1956.)

This cause came on to be heard on the transcript of the record from the National Labor Relations Board and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now ordered, adjudged, and decreed by this Court that the order of the National Labor Relations Board be and it is modified by striking therefrom the words "and employee ballot pro-

posals or any other proposals not involving conditions of employment" in paragraph 1 (b), the words "and threatening its employees with loss of employment unless they abandon the strike" in paragraph 1 (c), and the final paragraph dismissing so much of the complaint dealing with the alleged refusal of the Company to reinstate certain employees, with like modifications of the posted notice, and as so modified enforcement of the order is decreed. The case is remanded to the Board for further findings and ruling in accordance with the Court's opinion herein.

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# In the Supreme Court of the United States

OCTOBER TERM, 1956 57

WOOSTER DIVISION OF BORG-WARNER CORPORATION,  
CROSS-PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN  
OPPOSITION

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# In the Supreme Court of the United States

OCTOBER TERM, 1956

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No. 758

WOOSTER DIVISION OF BORG-WARNER CORPORATION,  
CROSS-PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN  
OPPOSITION

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## OPINIONS BELOW

The opinion of the court below. (Cross-Pet. 22-36) is reported at 236 F. 2d 898. The findings of fact, conclusions of law, and order of the Board (R. 385a-506a) <sup>1</sup> are reported at 113 N. L. R. B. 1288.

## JURISDICTION

The judgment of the court below (Cross-Pet. 36-37) was entered on September 12, 1956. On December 8,

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<sup>1</sup> Record references herein are to the record filed in No. 622, this Term. In that case, the Board seeks review of the portion of the decision below denying in part enforcement of the Board's order.

1956, by order of Mr. Justice Reed, the time for filing a cross-petition was extended to and including February 9, 1957. The cross-petition was filed on February 7, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 and under Section 10 (e) of the National Labor Relations Act, as amended, 61 Stat. 147, 29 U. S. C. 160 (e).

#### QUESTIONS PRESENTED

1. After appropriate proceedings, the International UAW-CIO Union was certified by the National Labor Relations Board as the exclusive bargaining representative of the Company's employees. In subsequent collective bargaining negotiations, the Company insisted, as a condition of agreement, that the employees' bargaining representative be identified in any agreement as "Local Union 1239, affiliated with the International Union \* \* \*" or "Local Union 1239 of [U. A. W.]." The first question presented is whether the court below properly sustained the Board's conclusion that such insistence by the Company constituted a refusal to recognize the certified bargaining representative in violation of Section 8 (a) (5) of the National Labor Relations Act.

2. The second question presented is whether substantial evidence on the record considered as a whole supports the Board's findings that the Company violated Section 8 (a) (1) of the Act by soliciting strikers directly to abandon the strike and return to their jobs, by offering and providing free transportation for this purpose, and by suggesting that an agreement might be consummated "if the Local would forget the International," the certified bargaining representative.

**STATUTE INVOLVED**

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et. seq.*), in addition to those set out in the cross-petition (p. 5), are as follows:

**RIGHTS OF EMPLOYEES**

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

**UNFAIR LABOR PRACTICES**

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

**STATEMENT****A. THE BOARD'S FINDINGS AND CONCLUSIONS**

The findings and conclusions of the Board, insofar as they relate to the questions presented in the cross-petition, may be summarized as follows:

1. *The violation of Section 8 (a) (5).* After appropriate proceedings, the Board, on December 18,

1952, certified the International Union, United Automobile Workers of America, CIO, as the exclusive bargaining representative of the Company's employees (R. 388a; 31a-34a). Thereafter, as more fully set forth in the Board's petition in No. 622, to which this Court is respectfully referred, the Company and the Union entered into negotiations for the purpose of arriving at an agreement covering terms and conditions of employment.

On January 23, 1953, the Union presented a proposed agreement to the Company referring to the Union as "International Union, United Automobile, Aircraft and Agricultural Implement Workers of America and its Local Union No. 1239, U. A. W.-CIO" (R. 475a; 34a, 154a). The International had chartered the Local shortly after the Board's certification had been issued (R. 239a, 240a). On February 9, the Company submitted counterproposals, dealing with so-called noneconomic issues, in which it designated the employees' representative as "Local Union 1239, affiliated with the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO)" (R. 475a; 36a-39a). The Union's representative, Pappin, told the Company representative, Adams, that this provision (the "recognition clause") "violated the certification of the Board" (R. 476a, 392a; 201a).

The Company's final proposal regarding the recognition clause was to change the designation of the contracting union from "Local Union 1239, affiliated



with the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America" to "Local Union 1239 of United Automobile, Aircraft and Agricultural Implement Workers of America" (R. 401a; 232a). The Union countered this last proposal with an offer to make its name read "the International, Local 1239" (R. 402a; 233a). However, the intent of both parties remained unchanged, the Union insisting that the International be the primary party and the Company insisting that the primary party be the Local (R. 476a-477a, 402a-403a, 234a, 352a-353a). Blythe, the Company's president and general manager, testified that the Company "did not have to" recognize the International as a party to the contract and that "the position of the company was at all times the agreement would be with the local" (R. 476a-477a, 394a-395a; 175a, 169a).

The Board found (R. 480a) that the Company's proposed recognition clause was a matter of substance, not merely one of language, and that the Company was insisting upon executing a contract with the Local to the exclusion of the International, the duly certified bargaining representative. Holding that such insistence was violative of the Act, the Board stated (R. 481a):

The designation of representatives pursuant to a Board election, is the function of this Board. This agency, accordingly, designated and certified the bargaining agent in this case. A demand that the legal status thus obtained be bargained away cannot be countenanced if

the purposes of the statute are to be realized. What has been won through the Board's election processes need not be re-won at the bargaining table.

2. *The violation of Section 8 (a) (1).* During the strike which followed the parties' failure to arrive at an agreement, the Company advertised extensively, in the press and by radio, urging the strikers to abandon the Union's "professionals" and to return to work (R. 485a-486a, 439a; 75a-76a, 159a-165a, 181a). By advertisement and letter, the Company offered to provide, and did provide, free transportation for this purpose (R. 485a-486a, 440a; 83a, 166a, 178a-179a). Early in April, the Local's vice-president, Patterson, was visited at his home by the Company's general foreman, McCune, and its tool foreman, Hunt. They urged Patterson to return to work and suggested that an agreement might be arrived at "if the Local would forget the International" (R. 485a, 439a-440a; 265a-266a).

The Board found that the above conduct "was reasonably calculated to undermine the Union and to demonstrate to the employees that the [Company] sought to bargain with other than the certified Union," and concluded that such conduct constituted restraint and interference prohibited by Section 8 (a) (1) of the Act (R. 485a-486a).

#### B. THE COURT OF APPEALS DECISION

1. *The violation of Section 8 (a) (5).* The court below sustained the Board's conclusion that the Company's adamant insistence upon its recognition clause

violated its bargaining duty on the ground that representative status "is acquired by statute and is not within the area of collective bargaining" (Cross-Pet. 30). Rejecting the Company's contention that the Act does not require that the written contract embodying the agreement be made with the agent who negotiated the agreement, the court held (Cross-Pet. 30-31):

It is a strained construction of the Act to say that the party representing the employees and negotiating such a trade agreement for their benefit is not entitled to complete the job by having the contract which it has negotiated executed with it as the representative of the individual employees for whom it is acting. Such a contract is necessarily executed with a representative of the individual employees. We fail to see the reasoning which would authorize the substitution of the Local, not the official representative of the employees, for the Union which is the official representative of the employees, over the objection of the Union. The fact that the Union offered to share this right with its Local did not give the Company the right to insist that it relinquish the right completely.

2. *The violation of Section 8 (a) (1).* The court below also affirmed the Board's findings that the Company's appeals to the employees to abandon the strike were calculated to undermine the Union's representative status. Accordingly, it concluded that these communications exceeded the permissible limits of free speech and constituted restraint and interference within the meaning of Section 8 (a) (1) of the Act (Cross-Pet. 31-32).

## ARGUMENT

1. The ruling of the court below (Cross-Pet. 31) that the Company violated the Act by insisting on a recognition clause "which would authorize the substitution of the Local, not the official representative of the employees, for the Union which is the official representative of the employees, over the objection of the Union," is plainly correct and presents no question warranting certiorari.

Under Section 8 (a) (5) of the Act, an employer is under a duty to bargain "with the representatives of his employees, subject to the provisions of Section 9 (a)." Section 9 (a), in turn, provides that "Representatives designated or selected by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours, or other conditions of employment \* \* \*." It is settled law that a union so designated is entitled not only to exclusive and unequivocal recognition as the employees' bargaining representative but also to have any collective bargaining agreement incorporated in a contract signed by the parties and to administer the contract on behalf of the employees whom it represents. *H. J. Heinz Co. v. National Labor Relations Board*, 311 U. S. 514, 525; *Ford Motor Co. v. Huffman*, 345 U. S. 330.

This status and the correlative rights which flow from it, as the court below correctly observed (Cross-Pet. 30), are "acquired by statute and [are] not

within the area of collective bargaining." The statutory requirement of "the signed agreement \* \* \* as the final step in the bargaining process" (*H. J. Heinz Co., supra*, at 525) cannot be satisfied by an agreement to which the certified representative, owed the duty of recognition and negotiation, is denied the status of a party over its objection. To say that an employer may insist, over the union's objection, that the legal status thus acquired by a duly chosen and certified representative of the employees be bargained away, would mean that what a union has won through the Board's election processes must be won at the bargaining table. The statute clearly does not countenance such an incongruous result. *McQuay-Norris Mfg. Co. v. National Labor Relations Board*, 116 F. 2d 748, 751 (C. A. 7), certiorari denied, 313 U. S. 565. See also *Douds v. Longshoremen's Association*, 39 L. R. R. M. 2388, 2391 (C. A. 2, February 4, 1957) (insistence on unit other than that certified by the Board as appropriate); *National Labor Relations Board v. Louisville Refining Co.*, 102 F. 2d 678, 680-681 (C. A. 6), certiorari denied, 308 U. S. 568 (insistence that union bargain through a local); *National Labor Relations Board v. Aldora Mills*, 180 F. 2d 580 (C. A. 5), enforcing 79 N. L. R. B. 1, 2 (same); *National Labor Relations Board v. Taormina*, 207 F. 2d 251, 254 (C. A. 5) (insistence that union secure consent of parent federation); *National Labor Relations Board v. Griswold Mfg. Co.*, 106 F. 2d 713, 719 (C. A.



3) (insistence that union's name be omitted from agreement). There are no contrary decisions.<sup>2</sup>

2. The Company's attack (Cross-Pet. 20-21) upon the Board's findings that it interfered with and restrained employees in the exercise of their statutory rights merely presents, as the cross-petition acknowledges, an issue as to sufficiency of the evidence. Certainly, in appropriate circumstances, the Board may properly find that direct appeals to employees to abandon a strike and ignore their bargaining representative during the pendency of collective bargaining negotiations are calculated to undermine the representative status of the bargaining agent and therefore violative of Section 8 (a) (1). *National Labor Relations Board v. Montgomery Ward & Co.*, 133 F. 2d 676, 681 (C. A. 9); *North Carolina Finishing Co. v. National Labor Relations Board*, 133 F. 2d 714, 715 (C. A. 4), certiorari denied, 320 U. S. 738; *National Labor Relations Board v. Spiewak*, 179 F. 2d 695, 696, 697

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<sup>2</sup> The Company's assertion (Cross-Pet. 15, 16) that the difference between the recognition clause proposed by it and that proposed by the International was "simply one of emphasis", and that the Company "merely asked \* \* \* for the Union's agreement" that the Local administer the contract, overlooks the findings of the Board which the court below affirmed. As the Board found, (1) the Company's proposal was one of substance, not of semantics, and would have substituted the Local for the International as the designated bargaining agent, and (2) the Company "adamantly refused to sign any agreement which even included the certified representative as a party thereto" (R. 481a). As the Board further pointed out (*ibid.*), the International's proposal merely included "the Local as a co-party to the contract, a not uncommon practice \* \* \*"—a proposal, moreover, which the International was free to make and the Company free to reject.

(C. A. 3). The approval by the court below of these findings involves only "a fair assessment of a record on the issue of unsubstantiality"—an issue which this Court does not normally undertake to review. *National Labor Relations Board v. Pittsburgh Steamship Co.*, 340 U. S. 498, 502-503.

#### CONCLUSION

For the reasons stated, it is respectfully submitted that the cross-petition for writ of certiorari should be denied.

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